EXPLANATORY STATEMENT

This Appendix to Petitioners' Brief has been compiled so as to present the material contained herein in such form as will permit of ready reference and convenient use by the Court and counsel. A brief description follows:

Volume I contains the Contents of Record, Petition for Review, Pleadings, Memoranda, Findings, Opinions and Orders of the Commission.

Volume II contains the following:

(a) Excerpts from the Requested Findings and Brief on Behalf of Respondents, filed with the Commission. These excerpts appear under the following respective headings:

VIRGINIA TRANSPORTATION

VIRGINIA GAS SYSTEM

TRANSPORTATION (BATON ROUGE BUS COMPANY)

GULF STATES WATER

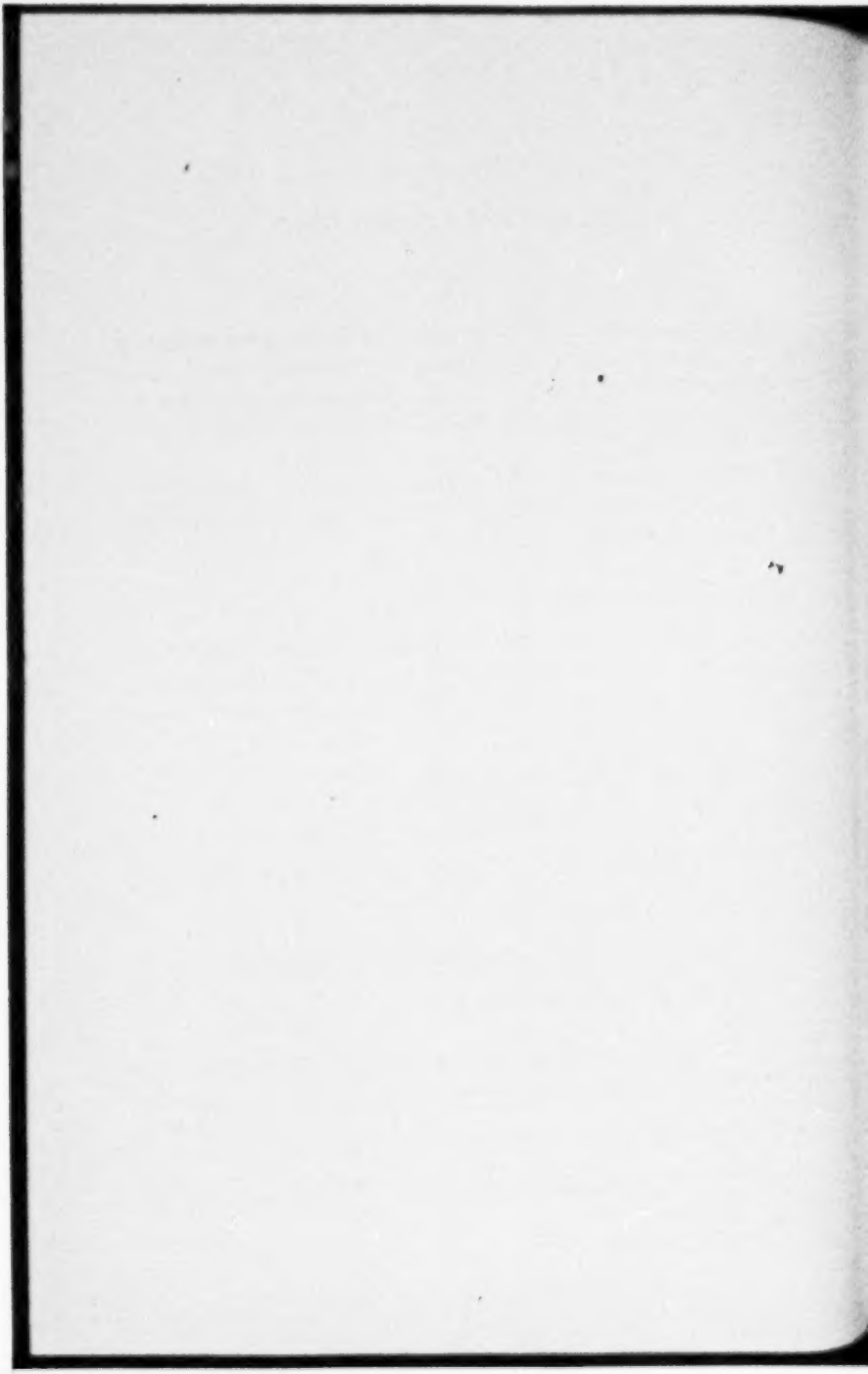
GULF STATES GAS SYSTEM

EL PASO TRANSPORTATION

(b) Excerpts from the testimony, segregated under the respective headings shown above.

(c) Exhibits.

Volume III contains Respondents' Proffer of Constitutional Evidence.



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213	44	Chart entitled, "Virginia Electric and Power Company, DC Conversion Equipment, December 1940"	6574
214	44-A	Document entitled "Virginia Electric and Power Company, D. C. Conversion Equipment December 31, 1940," showing the dates of original installation of the company's D. C. conversion equipment	6575
215	45	Tabulation entitled "Virginia Electric and Power Company, Large Industrial Customers Served on Schedule No. 10, 1940"	6576
216	46	Eight photographs showing some typical company sales floors	6577-6584
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220	50	Statement entitled "E-520 Income From Merchandise, Jobbing and Contract Work—Electric"	6601
221	51	Chart entitled "Virginia Electric and Power Company, Net Installations of Electric Ranges and Water Heaters by Company and Dealers"	6602
222	52	Chart entitled "Virginia Electric and Power Company, Estimated Revenue Resulting From Company Sales of Major Appliances"	6603
223	53	Chart entitled "Virginia Electric and Power Company, Trend of Major Electrical Appliances"	6604
224	54	Chart entitled "Virginia Electric and Power Company, Saturation of Major Appliances"	6605
225	55	Tabulation entitled "Virginia Electric and Power Company, Use and Cost of Electric Service Residential and Farm Customers"	6606
226	56	Photograph showing the display of gas merchandise on the sales floor in the Norfolk office	6607
227	57	Two photographs each entitled "Cooking School-Norfolk, Virginia"	6608–6609
228	58	Photograph entitled "Combination Gas and Electric Kitchen-Norfolk, Virginia"	6610
229	59	Three photographs entitled "Typical Window Display-Gas Appliances, Norfolk, Virginia"	6611–6613
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231	61	Statement entitled "Virginia Electric and Power Company, G-520 Income From Merchandise, Jobbing and Contract Work-Gas," for years 1937 to 1940 inclusive	6621
232	62	Chart entitled "Virginia Electric and Power Company, Residential Gas Service"	6622
233	63	**Document entitled "Virginia Electric and Power Company, Report on Departmental Income Statement for the Year Ended December 31, 1940"**	6623–6630
234	64	Map entitled, "Transmission System of the Gulf States Utilities Company"	6631
235	65	Tabulation giving list of communities to which electric service extended, by Gulf States Utilities Company	6632

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237	67	Map bearing legends indicating industries served by the Transmission System of the Gulf States Utilities Company	6634
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239	69	Map showing location of offices throughout area served	6651
240	70	List showing generating capacity for 1925-1939	6652
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243	73	Map showing development of system from 1925 through 1939	6658
244	74	Chart entitled "Gulf States Utilities Company, Fuel Efficiency Chart 1927-1940"	6659
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246	76	Charts showing power flow for six days on transmission tie line between Louisiana and Neches Stations	6661-6667
247	77	Map showing location of line crews	6668
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249	79	Copies of reports to stockholders by Gulf States Utilities Company, years 1935 to 1940, inclusive	6670-6672
250	80	Tabulation showing list of supply issues by years and net inventory adjustments	6675
251	81	Chart showing development of residential and rural service	6676
252	82	Chart entitled "Gulf States Utilities Company Power and Other Loads Excluding Residential and Commercial Service"	6677
253	83	Tabulation of average use and unit cost for residential customers compared with national average, 1929-1940	6678
254	84	Chart showing comparison of cost per kwh for residential service with nations' average, 1929-1940	6679

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255	85	Chart showing comparison of average use for residential service with national average, 1929-1940	6680
256	86	Document entitled "Gulf States Utilities Company, Electric Rates Available March 1, 1941"	6781–6825
257	87	Copy of the Third Supplemental Indenture dated March 1, 1941, to the indenture mortgage of Virginia Electric & Power Company to the Chase National Bank of the City of New York, dated November 1, 1935	6826–6913
258	88	Conformed copies of the contract between Virginia Electric & Power Company and First National Bank of Boston, First in Merchants National Bank of Richmond, State Planters Bank & Trust Company, and the Central National Bank of Richmond, all dated February 24, 1941, attached to each of which is a document marked exhibit A	6914–6925
259	89	Contract by and between Standard Oil Company of Louisiana, and Louisiana Steam Generating Corporation	6926–6985
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260	90	Contract by and between Louisiana Steam Generating Corporation and Ethyl Gasoline Corporation	6986–7038
261	91	Contract by and between Interstate Natural Gas Company and Louisiana Steam Generating Corporation	7039–7084
262	92	Map showing bus routes of the Baton Rouge Bus Company, Inc.	7085
263	93	Photograph of Baton Rouge Bus Company, Inc., bus garage	7086
264	94	Tabulation enttiled, "Baton Rouge Bus Company, Inc., Automotive Equipment as of June 1, 1941"	7087
265	95	Five photographs showing types of buses in use by Baton Rouge Bus Company, Inc.	7088–7099
266	96	Three photostatic copies of letters between Baton Rouge Electric Company, and Engineers Public Service Company, Inc., and Rex Finance Corporation, dated December 27, 1935, January 23, 1936, and January 28, 1936, respectively	7100–7103

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Document No.	Respondents' Exhibit No.		Record Page No.
267	97	Chart entitled, "Baton Rouge Bus Company, Inc., Organization Diagram"	7104
268	98	**Copy of comparative Income Statement, Earned Surplus Statement, and Balance Sheet for years ended December 31, 1939 and 1940, of Baton Rouge Bus Company, Inc.**	7105
269	99	**Tabulation entitled "Tabulation of Estimated Total Cost Per Month to Baton Rouge Bus Company, Inc. To Replace Employees Presently Used Jointly With Gulf States Utilities Company"**	7106
270	100	**Tabulation entitled "Gulf States Utilities Company, Water Properties Operated December 31, 1940, Their Capacity and Number of Customers Served"**	7107
271	101	Map entitled, "Gulf States Utilities Company, Water Distribution System, Lake Charles, La."	7108
272	102	Chart showing the extension of mains since 1925 in the Lake Charles, La. system	7109
273	103	Chart showing the increase in customers and investment in the Lake Charles water system since 1925 to December 31, 1940	7110
274	104	Chart entitled, "Gulf States Utilities Company, Water Plant Lake Charles, La., Schematic Diagram"	7111
275	105	Diagram entitled, "Gulf States Utilities Company, Water Well Cross Section, Lake Charles, La."	7112
276	106	Document entitled, "Gulf States Utilities Company, Water Rates, March 1, 1941"	7113-7120
277	107	Copies of certain Ordnances and water franchises relating to the water businesses of the company at Carencro, La., Lake Charles, La., Denham Springs, La., Calvert, Texas, Franklin, Texas, Navasota and Orange, Texas	7121-7167
278	108	Tabulation entitled, "Gulf States Utilities Company, Ice Properties Owned and Type of Ice Business Conducted—December 31, 1940"	7168
279	109	Map showing ice properties of Gulf States Utilities Company at Orange, Texas	7169
280	110	Map showing ice properties of Gulf States Utilities Company at Alvin, Texas	7170
281	111	Map showing ice properties of Gulf States Utilities Company at Conroe, Texas	7171
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283	113	Map showing ice properties of Gulf States Utilities Company at Calvert, Texas	7173
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285	115	Map showing ice properties of Gulf States Utilities Company at Navosota, Texas	7175
286	116	Six photographs showing sales rooms in several of the communities served by the Gulf Utilities Company	7176–7188
287	117	Tabulation entitled, "Gulf States Utilities Company, Survey of Ranges, Refrigerators and Water Heaters Connected To Our Lines December 31, 1940"	7189
288	118	Document entitled, "Gulf States Utilities Company, Degree of Saturation of Major Electric Appliances Percentage Saturation"	7190
289	119	**Tabulation entitled, "Gulf States Utilities Company, Department Income Statement—Year Ended 12-31-40"**	7191
290	120	Tabulation entitled, "Gulf States Utilities Company, Comparative Statement of Electric Merchandise Business"	7192
291	121	Tabulation entitled, "Gulf States Utilities Company, Comparative Statement of Gas Merchandise Business"	7193
292	122	Statement entitled, "Costs Assignable to Ice Department Which Would Be Absorbed By Other Departments If Ice Business Were Discontinued"	7194
293	123	Tabulation entitled, "Gulf States Utilities Company, Ice Plant Investment At Time of Sale, Sale Price and Gross Earnings for 12-Month Period Preceding Sale"	7195
294	124	Certified copy of the May 14, 1941, resolutions of the board of directors of Virginia Electric Power & Light Company	7196
295	125	Statement entitled, "Virginia Electric and Power Company, Compensation of Employees Charged to Transportation Department as Per Taylor Report Which Would Have To Be Absorbed By Electric and Gas Departments If Transportation Department is Disposed of"	7197
296	126	Tabulation entitled, "Virginia Electric and Power Company, Expenses Charged to Transportation Department As Per Taylor Report Which Would Have To Be Absorbed By Electric and Gas Departments If Transportation Department is Disposed of"	7198

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Document No.	Respondents' Exhibit No.		Record Page No.
297	127	Contract entitled, "Articles of Agreement Between Virginia Electric and Power Company and Independent Organization of Employees of the Virginia Electric and Power Company, dated May 23, 1941"	7199-7253
298	128	**Statement entitled, "Virginia Electric and Power Company, Value of Transportation Business Thousands of Dollars"**	7254
299	129	Copy of document entitled, "Contract Between El Paso Electric Co. (Tex.) and El Paso and Juarez Traction Co."	7255-7262
300	130	Map entitled, "1925 Territorial Map of El Paso Electric System, El Paso, Texas"	7263
301	131	Map entitled, "1941, Territorial Map of El Paso Electric Company System, El Paso, Texas"	7264
302	132	Document entitled, "Towns, Villages & Communities Served," by El Paso Electric Company	7265
303	133	Map showing the principal offices of the El Paso Electric Company System	7266
304	134	Seventy-four photographs showing views of the system's generating stations, offices and other buildings, sales rooms, etc. of El Paso Electric Company System	7267-7341
305	135	List of the principal franchises under which the El Paso Electric Company system conducts its various operations	7342
306	136	Copies of Contracts Between El Paso Electric Company, and Bureau of Reclamation, City of El Paso, Texas, Las Cruces, New Mexico and Hatch, New Mexico	7343-7370
307	137	Chart showing the organization of the El Paso Electric Company System	7371
308	138	Chart showing Major Appliances Connected Refrigerators, Ranges and Water Heaters of El Paso Electric Company System 1931-1939	7372
309	139	Table showing Saturation of Major Electrical Appliances of El Paso Electrical Company System (1930-1939)	7373
310	140	Chart showing total coolers connected residential air-conditioning of El Paso Electric Company System (1936-1940)	7374

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311	141	Complete Set of Rate Schedules and Rules and Regulations, April 1941, of El Paso Electric Company System	7375–7438
312	142	Chart showing Cost of Residential Service (30 KWHR) of El Paso Electric Company System (1925-1939)	7439
313	143	Table showing Estimated Reductions Electric Rates of El Paso Electric Company System, October 18, 1929 to November 1, 1939 inclusive	7440
314	144	Chart showing Cost of Residential Electric Service City Rate Zone of El Paso Electric Company System (1925-1939)	7441
315	145	Chart showing Average Rate per KWHR of El Paso Electric Company System (1925-1939)	7442
316	146	Chart showing annual revenue, sales of electric energy of El Paso Electric Company System (1925-1939)	7443
317	147	Chart showing Annual KWHR Sales of El Paso Electric Company System (1925-1939)	7444
318	148	Chart entitled, "Number of Customers" of El Paso Electric Company System	7445
319	149	Chart entitled, "Cost of Commercial Lighting Service, 5KW Connected Load," of El Paso Electric Company System	7446
320	150	Chart showing Percentage of Total Residential and Farm Customers in various KWHR consumption brackets. (Excluding off peak Water Heating Use)	7447
321	151	Chart showing Residential and Farm Service Average Annual KWHR use per customer of El Paso Electric Company System (1925-1939)	7448
322	152	Chart showing Residential and Farm Service Average Annual Revenue per Customer of El Paso Electric Company System (1925-1939)	7449
323	153	Chart showing Residential and Farm Service Average Rate per KWHR of El Paso Electric Company System (1925-1939)	7450
324	154	Tabulation entitled, "History and Capacity of Generating Units and Boilers Santa Fe Station," by El Paso Electric Company System	7451
325	155	Chart entitled, "Power Factor Improvement, Rio Grande Station, No. 2 Turbo Generating Unit 25,000 KW.—80% P.F.—31,250 KW.—100% P.F."	7452

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Document No.	Respondents' Exhibit No.		Record Page No.
326	156	Chart showing History and Capacity of Generating Units and Boilers, Rio Grande Station, El Paso Electric Company System	7453
327	157	Rio Grande Station Maintenance Schedule Annual Inspection of No. 2 Turbine, El Paso Electric Company System	7454-7456
328	158	Document entitled, "Annual Inspection No. 1 Boiler Feed Pump, Monthly Inspections No. 2 Boiler Feed Pump, Air Compressor, El Paso Electric Company System"	7457-7460
329	159	Document entitled, "Monthly Inspections No. 1 Revolving Apparatus, Fire Pump, Station Building, El Paso Electric Company System"	7461-7462
330	160	Document entitled, "Monthly Inspection No. 2 Condenser Annual Inspection No. 2 Boiler, El Paso Electric Company System"	7463-7465
331	161	Chart showing Daily Peak Load—Output and Efficiency Data (1938-1939)	7466
332	162	Chart entitled "Efficiency Charts Steam Production, El Paso Electric Company System"	7467
333	163	Chart showing Production Costs, excluding Fixed Charges Steam Production, El Paso Electric Company System (1925-1939)	7468
334	164	Chart showing Production Costs Including Fixed Charges Steam Production, El Paso Electric Company System (1925-1939)	7469
335	165	Statement entitled, "El Paso Electric Company Production Department Generating Capacity Study—Sierra Blanca, Comparison of Present Diesel Operation, New Diesel Operation, Distribution Line Operation and Estimated 1942 Distribution Line Operation"	7470
336	166	Chart showing Generation Costs Excluding and Including Fixed Charges Diesel Engine Production, El Paso Electric Company System	7471
337	167	Six Charts showing typical construction standards for city and rural lines, El Paso Electric Company System	7472-7477
338	168	Map entitled, "Fault Analysis Map," El Paso Electric Company System	7478

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339	169	Document entitled, "One Line Diagram Transmission Line and Substation Map—1925," El Paso Electric Company System	7479
340	170	Document entitled, "One Line Diagram Transmission Line and Substation Map—1940", El Paso Electric Company System	7480
341	171	Map entitled, "System Underground Line El Paso"	7481
342	172	Chart entitled, "Efficiency in Operation Losses and Energy Unaccounted For", El Paso Electric Company System	7482
343	173	Tabulation showing comparative statement of Inventory Investment, El Paso Electric Company System, 1925 to 1939 inclusive	7483
344	174	Letter dated March 27, 1941, from Engineers Public Service Company, Inc. to the Securities Exchange Commission	7484–7494
345	175	Statement showing a breakdown of earnings between the electric department and transportation department of the El Paso Electric Company System, including El Paso Electric Company (Texas), Mesilla Valley Electric Company, and El Paso and Juarez Traction Company, and for the years 1937 to 1940 inclusive	7495–7499
346	176	**Statement entitled, "El Paso Electric Company (Texas), Mesilla Valley Electric Company, El Paso & Juarez Traction Company, Combined Income Statement (After inter-company eliminations) Showing Effect of Revised Allocations, Year 1940"**	7500
347	177	Statement entitled, "El Paso Electric Company System (Including Mesilla Valley Electric Company) Statement of Income and Expenses of Merchandise, Jobbing and Contract Work"	7501
348	178	Map showing Mule Car Routes—1902, El Paso Electric Company System	7502
349	179	Map showing electric railway routes in the City of El Paso, Texas, and the City of Juarez, Mexico (1905)	7503
350	180	Map of Routes of Street Car and Interurban Lines of El Paso Electric Company System, 1925	7504
351	181	Map of Routes of Bus and Street Car Lines of El Paso Electric Company System, 1940	7505

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Document No.	Respondents' Exhibit No.		Record Page No.
352	182	Chart showing Miles of Railway (Equivalent Single Track) Miles of Bus Route (½ of Round Trip) (1902-1940) El Paso Electric Company System	7506
353	183	Chart showing Street car and Bus Equipment data (1909-1940) of El Paso Electric Company System	7507
354	184	Document entitled "Acts of Congress Authorizing Construction of Stanton and Santa Fe Bridges", El Paso Electric Company System	7508-7521
355	185	**Chart showing Plant Investment—Transportation Division of El Paso Electric Company System**	7522
356	186	**Chart showing Gross Earnings of Electric and Transportation Division of the El Paso Electric Company System, 1902-1940**	7523
357	187	**Document entitled "El Paso Electric Company (Delaware) and Subsidiaries, Value of Transportation Business Thousands of Dollars"**	7524-7525
358	188	Tabulation showing the gross revenues of the electric business and the transportation business of Savannah Electric and Power Company's predecessors and of Savannah Electric and Power Company	7526-7527
359	189	Tabulation entitled, "Savannah Electric and Power Company, Gross Operating Revenues by Departments 1903-1940 inclusive"	7528
360	190	Document entitled, "Savannah Electric and Power Company, List of Reports To Regulatory and Taxing Authorities"	7529-7531
361	191	Tabulation entitled, "Savannah Electric and Power Company, Ten Year Summary of Operations—Supply Department Reflecting Growth of Company Compared to Investment in Material & Supplies"	7532
362	192	Tabulation entitled, "Savannah Electric and Power Company, Trend of Uncollectible Accounts"	7533
363	193	Tabulation entitled, "Savannah Electric and Power Company, Data on Accidents and Costs of Claims, Transportation Department"	7534
364	194	Tabulation entitled, "Savannah Electric and Power Company, Typical Net Monthly Bills for Varied Usage on Residential Rates In Effect From 1920 To Date"	7535

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Document No.	Respondents' Exhibit No.		Record Page No.
365	195	Copies of the Residential, Commercial and Industrial Rates of the Savannah Electric and Power Company	7536–7539
366	196	Map of the area served by the Savannah Electric and Power Company which shows the concentration of customers in that area	7540
367	197	Tabulation entitled, "Savannah Electric and Power Company, Communities Served and Population as of January 1, 1941"	7541
368	198	Map showing the electric power system of the Savannah Electric and Power Company	7542
369	199	Map of Savannah and vicinity on which are indicated the principal industries served by the Savannah Electric and Power Company	7543
370	200	Chart entitled, "Organization Chart Showing Permanent Full Time Employees, Savannah Electric & Power Company, Savannah, Georgia, March 31, 1941"	7544
371	201	Book containing photographs of the power plant, main office, service building, bus garage and car barns, and certain sub-stations of the Savannah Electric & Power Company	7545–7556
372	202	**Report entitled, "Virginia Electric and Power Company, Recommendations as to Methods of Allocating Expenses to Electric, Gas and Transportation Departments and to Merchandise and Jobbing Activities"**	7557–7608
373	202–A	Tabulation of miscellaneous expenses of Virginia Electric and Power Company chargeable to the Transportation Department as per Taylor Report of August 1, 1941	7609
374	202–B	Tabulation entitled, "Virginia Electric and Power Company, Estimated Effect Upon the Company, Based Upon 1940 Operations, If Its Merchandise and Jobbing Sales Were Discontinued"	7610
375	203	Copy of contract between Savannah Electric & Power Company and Georgia Power Company, entered into on May 21, 1941	7611–7618
376	204	Tabulation entitled, "Savannah Electric and Power Production Operating Costs For the Years 1925-1940, Inclusive"	7619

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Document No.	Respondents' Exhibit No.		Record Page No.
377	205	Tabulation entitled, "Savannah Electric and Power Company, Tabulation Showing Improvement In Power Plant Operation Since 1925 Expressed in B.T.U. Per K.W.H. Not Generated"	7620
378	206	Tabulation entitled, "Savannah Electric and Power Company, Tabulation Showing Annual Losses Between Net Generated and Delivered Since 1925, Electric Department"	7621
379	207	Map of the City of Savannah and Vicinity, showing street car & bus route layout (January 1, 1941, within the city limits	7622
380	208	Map showing street car & bus route layout, outside of city limits of Savannah, Georgia, January 1, 1941	7623
381	209	Tabulation entitled, "Savannah Electric and Power Company Street Car and Bus Service Data As of March 31, 1941"	7624
382	210	Chart showing in terms of monthly figures the total passengers per revenue mile carried by Savannah Electric and Power Company transportation system from January 1, 1930 to March 31, 1941	7625
383	211	Copies of income statements for years 1938 to 1940 inclusive of the Savannah Electric and Power Company	7626-7629
384	212	Tabulation entitled, "Savannah Electric and Power Company, Method Used in Determining Charge To The Transportation Department For Electric Energy Used For Street Railway Purposes For The Year 1940"	7630
385	213	Tabulation entitled, "Savannah Electric and Power Company, Income Statement Showing Effect of Revised Allocations Year 1940"	7631
386	214	Tabulation entitled, "Savannah Electric and Power Company, Statement of Income and Expenses of Merchandise, Jobbing and Contract Work"	7632
387	215	Statement entitled, "Savannah Electric and Power Company, Income Statement — Transportation Department 1940, Adjusted To Reflect All Bus Operation and Revised Allocations"	7633
388	216	Statement entitled, "Savannah Electric and Power Company, Major Appliances Sold by Company," years 1927 to 1940 inclusive	7634
389	217	Statement entitled, "Savannah Electric and Power Company, Major Appliances Sold by Dealers," years 1928 to 1940 inclusive	7635

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Document No.	Respondents' Exhibit No.		Record Page No.
390	218	Statement entitled, "Savannah Electric and Power Company, Residential Customer Data, years 1928 to 1940 inclusive	7636
391	219	Tabulation entitled, "Savannah Electric and Power Company, Estimated Effect on the Company If Sales of Merchandise Were Discontinued Based on 1940 Operations"	7637–7638
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392	220(Iden)	**Document entitled, "Respondents' Proffer of Constitutional Evidence, Engineers Public Service Company, August 18, 1941"**	7639–8006
393	220–A	Tabulation entitled, "Virginia Electric and Power Company, Customers Accounting and Collecting Expense, July, 1941"	8007
394	220–B	Tabulation entitled, "Virginia Electric and Power Company, Detail of Customers Accounting and Collecting Expense"	8008
395	220–C	Tabulation entitled, "Virginia Electric and Power Company, Customers' Accounting and Collecting Expenses, Norfolk District"	8009
396	221	**Tabulation entitled, "Virginia Electric and Power Company, Statement of Increased Customers Accounting and Collecting Costs of Gas Department If Operated as Separate Company"**	8010–8011
397	222	**Document entitled, "Virginia Electric and Power Company, Expenses Charged to Gas Department as Per Taylor Report Which Would Have to be Absorbed by Other Departments in Event of Disposal of the Gas Department"**	8012–8024
398	223	**Document entitled, "Virginia Electric and Power Company, Statement of Increased Cost of Customers Accounting, Sales, and Administration and General Office Expenses of the Gas Department If Operated as an Independent Company"**	8025–8033
399	224	**Tabulation entitled, "Virginia Electric and Power Company, Increase in Expenses if Gas Department is Operated as an Independent Company"**	8034

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Document No.	Respondents' Exhibit No.		Page
400	225	Tabulation entitled, "Gulf States Utilities Company, Statement of Increased Customers' Accounting & Collecting Costs of Gas Department If Operated as Separate Company"	8035-8036
401	226	Tabulation entitled, "Gulf States Utilities Company, Customers' Accounting & Collecting Expenses July 1941"	8037-8039
402	227	**Tabulation entitled, "Certain Increased Costs Which Would Result If The Gas Properties And Gas Business (Including Sale of Gas Merchandise) of Gulf States Utilities Company Were Owned and Operated By An Independent Company"**	8040-8059
403	228	**Tabulation entitled, "Virginia Electric and Power Company, Expenses Charged To Transportation Department Which Would Have To Be Absorbed By Other Departments in Event of Disposal of the Transportation Department"**	8060-8072
404	229	Copy of Exhibit F of Form U-13-1, filed by Engineers Public Service Company, Inc., with this Commission	8073-8076
405	230	Tabulation entitled, "Supervision Costs, Virginia Electric and Power Company and Savannah Electric and Power Company"	8077
406	231	Tabulation entitled, "Supervision Costs, Gulf States Utilities Co., Baton Rouge Bus Co., Inc., El Paso Electric Co. (Del.)"	8078
407	232	Statement entitled, "Gulf States Utilities Company, Explanatory Statement in Respect to Estimated Effect on Company Operations If Merchandise and Jobbing Activities Were Discontinued, Based on 1940 Figures"	8079-8090
408	233	Statement entitled, "El Paso Electric Company System, Explanatory Statement Regarding a Study of the Estimated Effect on El Paso Electric Company System If Merchandising and Jobbing Activities Were Discontinued, Based on 1940 Operations"	8091-8100

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Document No.	Respondents' Exhibit No.		Record Page No.
409	234	Copy of contract entitled, "S & W Form No. D704, Service Contract for Operating Companies, Stone & Webster Service Corporation"	8101–8107
410	235	Copy of contract entitled, "S & W Form No. D704, Service Contract for Holding Companies, Stone & Webster Service Corporation"	8108–8112
411	236	Copy of a letter from Tom P. Walker to Engineers Public Service Company, Inc., dated September 7, 1939, to which are attached four tabulations	8113–8120
412	237	Letter from Tom P. Walker to Engineers Public Service Company, Inc., dated December 29, 1936	8121–8122
413	238	Copy of a memorandum from J. M. DeBuoy to Mr. Faber, dated November 25, 1936	8123–8135
414	239 (Iden)	Application for a Trial Examiner's Report or an Extension of Time for Filing a Request for Specific Findings and Brief in Support Thereof, and Authorities Supporting Respondent's Request for a Trial Examiner's Report	8136
415	240	Statement entitled, "Gulf States Utilities Company, Jasper, Texas"	8137–8142
416	241	Statement entitled, "Gulf States Utilities Company, Alvin, Texas"	8143–8148
417	242	Stipulation Correcting Certain Errors in the Transcript of Testimony	8149–8228

City of Norfolk's exhibits introduced at hearing held April 30, 1941.

Document No.	Norfolk's Exhibit No.		Record Page No.
418	1	Copy of a resolution adopted by the Council of the City of Norfolk, Virginia, on April 22, 1941	8229–8230

City of Portsmouth's exhibits introduced at hearing held on June 17, 1941.

Document No.	Portsmouth's Exhibit No.		Record Page No.
419	1	Copy of a resolution adopted by the Council of the City of Portsmouth, Virginia, at a meeting held May 2, 1941	8231

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Document No.

Material Received in Evidence by Reference at the hearing , held on May 29, 1941.

Certain Indentures included as Exhibits to the Form U-5-B and U-5-S Statements filed with the Securities and Exchange Commission by Engineers Public Service Company, as follows:

420 Exhibit C—Part 3(a) to U5B—Indenture of Mortgage of Gulf States Utilities Company to the Chase National Bank of the City of New York, as Trustee, dated September 1, 1926 .....

421 Exhibit C—Part 3(a)(1) to U5B—First Supplemental Indenture, dated as of May 1, 1929.....

422 Exhibit C—Part 3(a)(2) to U5B—Second Supplemental Indenture, dated as of June 1, 1931.....

423 Exhibit C—Part 3(a)(3) to U5B—Third Supplemental Indenture, dated as of October 1, 1936.....

424 Exhibit C—Part 1 to U5S—1938—Fourth Supplemental Indenture, dated September 1, 1938.....

425 Exhibit C—Part 2 to U5S—1938—Indenture, dated March 21, 1939 .....

426 Exhibit C—Part 3 to U5S—1938—Conformed copy of Loan Agreement between Gulf States Utilities Company and the Chase National Bank of the City of New York, dated February 7, 1939, to which is attached copy of form of promissory note, dated March 21, 1939.....

427 Exhibit C filed with the Application of Gulf States Utilities Company on Form U-1, dated February 14, 1941.....

428 Exhibit C—Part 2(b) to U5S—1939—Fifth Supplemental Indenture, dated May 1, 1939.....

429 Exhibit B—Part 7 to U5B—Charter of Gulf States Utilities Company with all amendments to June 29, 1938.....

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VOLUME XXI

Document No.		Record Page No.
430	Exhibit B—Part 5 to U5S—1938—Certificate of Amendment to Charter of Gulf States Utilities Company, effective July 12, 1938	8851–8855
	Material received in evidence by reference at the hearing held on June 6, 1941.	
	Certain items and exhibits of the Form U5B and U5S Statements filed with this Commission by Engineers Public Service Company, as follows:	
431	Item 5, pages 6 through 44 of the Registration for year 1937.	
432	Item 6, pages 45 to 61 of the Registration Statement	
433	Exhibit D of the Registration Statement	
434	Item 5, pages 6 through 27 of the annual supplement for the year 1938	9177–9198
435	Item 6, pages 28 through 40 of the annual supplement for the year 1938	9199–9211
436	Exhibit D, pages 1 to 11, of the annual supplement for the year 1938	9212–9222
437	Exhibit F, part 1, of the annual supplement for the year 1938	9223–9305
438	Item 5-A, pages 4 through 7, of the annual supplement for the year 1939	9306–9309
439	Item 5-C, page 9 of the annual supplement for the year 1939	9310
440	Item 6-B, pages 11 through 13, of the annual supplement for the year 1939	9311–9313
441	Exhibit D of the annual supplement for the year 1939	9314–9355
442	Exhibit F-1 of the annual supplement for the year 1939	9356–9423
443	Item 4, pages 3 through 6 of the annual supplement for the year 1940	9424–9427
444	Item 5-A, pages 7 to 12, of amendment No. 3, to the annual supplement for year 1940	9428–9433
445	Item 5-C, page 14 of amendment No. 3 to the annual supplement for the year 1940	9434

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Document No.		Record Page No.
446	Item 6, pages 16 through 20 of amendment No. 3 to the annual supplement for the year 1940	9435-9439
447	Item 8-A, pages 22 and 23 of amendment No. 3 to the annual supplement for the year 1940	9440-9440
	VOLUME XXIII	
448	Item 8-B, pages 24 through 26 of amendment No. 3 to the annual supplement for the year 1940	9442-9444
449	Item 9, pages 38, 39 and 40 of amendment No. 3 to the annual supplement for the year 1940	9445-9447
450	Item 10, pages 41 through 45 of amendment No. 3 to the annual supplement for year 1940	9448-9452
451	Item 11, pages 46 and 47 of amendment No. 3 to the annual supplement for the year 1940	9453-9454
452	Items 16-A and 16-B, pages 63 through 77 of amendment No. 3 to the annual supplement for the year 1940	9455-9469
453	Exhibit D of the annual supplement for the year 1940	9470-9517
454	Exhibit E-1 of the annual supplement for the year 1940	9518-9521
455	Exhibit E-3 to amendment No. 3 of the annual supplement for the year 1940	9522
456	Exhibit E-4 to amendment No. 3 of the annual supplement for the year 1940	9523-9530
457	Exhibit E-5 to amendment No. 3 of the annual supplement for the year 1940	9531
458	Exhibits F-1, F-2, F-3, F-5, F-6, F-7 and F-9 to amendment No. 3 to the annual supplement for the year 1940	9532-9728
	VOLUME XXIV	
	Material received in evidence by reference at the hearing held on October 9, 1941.	
459	Commission File No. 49-20-1, containing the 1939 and 1940 annual reports of Engineers Public Service Company, Inc., filed on form U-13-60	9729-9806

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Document No.			Record Page No.
		Material received in evidence by reference at the hearing held on June 10, 1941.	
460		Pages 132 through 141 of this transcript of the official report of proceedings before the Commission in the matter of Engineers Public Service Company, et al., File No. 46-92	9807–9817
		Record (except for Transcripts of Hearings which have been previously incorporated herein) in the matter of Virginia Electric & Power Company, File No. 31-507, incorporated in this record by order of the Commission at the oral argument held on June 5, 1941.	
461		Application pursuant to Rule U-2 4-1, For and Order under Section 2(a)(4) of the Public Utility Holding Company Act of 1935 filed with this Commission March 18, 1941 by Virginia Electric & Power Company	9818–9823
Document No.	**Commission's Exhibit No.**		**Record Page No.**
462	1	Notice of and Order of this Commission dated March 27, 1941, for Hearing in matter of Gulf States Utilities Company	9824
463	2	Copy of Securities and Exchange Commission, Holding Company Act Release No. 2656, dated March 27, 1941	9825–9826
464	3	Statement entitled "Virginia Electric and Power Company—Tabulation Showing Total Operating Expenses of the Electric and Gas Departments With an Allocation of Customers' Accounting and Collecting Expenses, Sales Promotion Expenses and Administrative and General Expenses on a Per Customer Basis for the Year Ended December 31, 1939"	9827
465	4	Tabulation entitled "Virginia Electric and Power Company, Additions and Retirements to Gas Property"	9828–9829
466	5	Tabulation entitled "Virginia Public Service Company, Tabulation Showing Total Operating Expenses of the Electric and Gas Departments With an Allocation of Customers' Accounting and Collecting Expenses, Sales Promotion Expenses and Administrative and General Expenses on a Per Customer Basis for the Year Ended December 31, 1939"	9830
467	6	Report on the Gas Properties of Viriginia Electric Power Company. (This exhibit withdrawn subsequently, except that two pages thereof were introduced as Commission's Exhibit 97 in File No. 59-4) (See Document No. 164 herein)	9831

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Document No.	V. E. & P. Co. Exhibit No.		Record Page No.
		Virginia Electric and Power Company's Exhibits introduced in this record.	
468	1	Map entitled "Norfolk and Vicinity Territory Served in 1920 and Additional Territory Served Since 1920"	9832
469	2	Photograph entitled "Air View-Gas Plant, 1940 Norfolk, Va."	9833-9834
470	3	Photographs entitled "General View-Gas Plant Prior to 1918, Norfolk, Va."	9835-9836
471	4	Photograph entitled "Purifying Plant 1920, Norfolk, Va."	9837
472	5	Photograph entitled "Purifying Plant 1940, Norfolk, Va."	9838
473	6	Photograph entitled "West End of Yard 1919, Norfolk, Va."	9839-9840
474	7	Photograph entitled "Section of Yard 1940, Norfolk, Va."	9841
475	8	Chart entitled, "Virginia Electric and Power Company, Gas Fuel Costs", for years 1921 to 1939 inclusive	9842
476	9	Chart entitled "Virginia Electric and Power Company, Gas Production", for years 1921 to 1939 inclusive	9843
477	10	**Chart entitled "Virginia Electric and Power Company, Gas Operating Revenue and Expenses", for years 1921 to 1939 inclusive**	9844
478	11	Document entitled "Virginia Electric and Power Company, Income Statement, Gas Department", for years 1937 to 1939 inclusive	9845-9846
479	12	Tabulations entitled "Virginia Electric and Power Company, Gas Department, Book Value of Plant and Property", for years 1922 to 1939 inclusive	9847
480	13	Statement entitled "Virginia Electric and Power Company—Comparative Summary Showing in Customers' Accounting Costs the Savings to Gas Department at Norfolk under Joint Operation"	9848-9850
481	14	Chart entitled "Virginia Electric and Power Company, Gas Fuel Costs", for years 1921 to 1940 inclusive	9851
482	15	Chart entitled "Virginia Electric and Power Company, Gas Production", for years 1921 to 1940 inclusive	9852

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Document No.	V. E. & P. Co. Exhibit No.		Record Page No.
483	16	Chart entitled "Virginia Electric and Power Company, Gas Operating Revenue and Expense", for years 1921 to 1940 inclusive	9853
484	17	Statement entitled "Virginia Electric and Power Company, 1940 Income Statement Gas Department"	9854–9855
485	18	Document entitled "Virginia Electric and Power Company, Gas Department, Book Value of Plant and Property"	9856
486	19	Photograph entitled "Sales Floor, (Gas), Norfolk, Va."	9857–9858
487	20	Photograph entitled "Cooking School," Norfolk, Va."	9859–9860
488	21	Photograph entitled "Cooking School, Norfolk, Va.," showing view of the stage in the auditorium at the cooking school	9861–9862
489	22	Photograph entitled "Combination Gas and Electric Kitchen, Norfolk, Va."	9863–9864
490	23	Photograph entitled "Typical Window Display, Gas Appliances, Norfolk, Va."	9865–9866
491	24	Photograph entitled, "Typical Window Display, Gas Appliances, Norfolk, Va."	9867–9868
492	25	Photograph entitled, "Gas Appliance Display, Norfolk, Va."	9869–9870
493	26-A	Photograph illustrating advertisement featuring Hot Water	9871–9872
494	26-B	Photograph of advertising matter for Gas House Heating	9873–9874
495	26-C	Photograph illustrating water heater rental advertisement	9875–9876
496	26-D	Photograph illustrating a Radiant Heater advertisement	9877–9878
497	26-E	Photograph illustrating a gas range advertisement..	9879–9880

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Document No.	V. E. & P. Co. Exhibit No.		Record Page No.
498	26-F	Photograph illustrating an advertisement of a gas water heater, on a street car	9881-9882
499	26-G	Photograph entitled, "Typical Signboard Gas Water Heater, Norfolk, Va."	9883-9884
500	27	Chart entitled, "Virginia Electric and Power Company, Estimated Reduction Gas Rates	9885-9886
501	28	Statement entitled, "History of Residential Gas Rate Changes, Virginia Electric and Power Company	9887-9888
502	29	Statement entitled, "History of Commercial and Industrial Gas Rate Changes, Virginia Electric and Power Company"	9889-9891
503	30	Tabulation entitled, "Gas Service Rates 1926-1939"	9892-
504	31	Chart entitled, "Virginia Electric and Power Company, Gas Service Average Rate Per 1,000 Cubic Feet", for years 1921 to 1939 inclusive	9893
505	32	Chart entitled, "Virginia Electric and Power Company, Gas Service, Average Annual Use Per Customer", for years 1921 to 1939 inclusive	9894
506	33	Chart enotitled, "Virginia Electric and Power Company, Gas Service, Comparative Average Annual Use Per Customer", for years 1921 to 1939 inclusive	9895
507	34	**Tabulation entitled, "Comparison of Gas Service Rates"**	9896
508	35	**Chart entitled, "Virginia Electric and Power Company, General Gas Service, Comparison of Monthly Cost"**	9897
509	36	**Chart entitled, "Virigina Electric and Power Company, Residential Gas Service, Comparison of Monthly Cost of 3,000 Cubic Feet of Gas", for years 1926 to 1939 inclusive**	9898
510	37	Chart entitled, "Virginia Electric and Power Company, Gas Service Average Rate Per 1,000 Cubic Feet", for years 1921 to 1940 inclusive	9899
511	38	Chart entitled, "Virginia Electric and Power Company, Gas Service, Average Annual Use Per Customer", for years 1921 to 1940 inclusive	9900
512	39	Chart entitled, "Virginia Electric and Power Company, Gas Service, Comparative Average Annual Use Per Customer", for years 1921 to 1940 inclusive	9901

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Document No.	V. E. & P. Co. Exhibit No.		Record Page No.
513	40	Chart entitled, "Virginia Electric and Power Company, Residential Gas Service Comparison of Monthly Cost of 3,000 Cubic Feet of Gas", for years 1926 to 1940 inclusive	9902
514	41	Tabulation entitled, "Virginia Electric and Power Company Income Statement", for years 1937 to 1940 inclusive	9903–9904
515	42	Tabulation entitled, "Virginia Electric and Power Company, Operating Revenues", for years 1931 to 1940 inclusive	9905
516	43	Tabulation entitled, "Virginia Electric and Power Company, Comparative Balance Sheet", for years 1937 to 1940	9906–9907
517	44	Tabulation entitled, "Virginia Electric and Power Company, Book Value of Utility Plant", for years 1931 to 1940 inclusive	9908
518	45	Statement entitled, "Virginia Electric and Power Company, Reconciliation of Gross Revenue of Company from All Sources With Reported Operating Revenue of the Company"	9909
519	46	Statement showing Gas Supplied to Electric and Transportation Departments, Transportation Supplied to Gas Employees, and Total Increase in expenses, for years 1937 to 1940 inclusive	9910
520	47	Securities and Exchange Commission Docket No. 31-507-1, more specifically Application Pursuant to Rule U-2A4-1 For An Order Under Section 2(a)(4) of the Public Utility Holding Company Act of 1935	9911
521	48	Copy of a report entitled, "Report and Opinion of A. Merritt Taylor (Philadelphia) in the Matter of Proposed Increase in Rates of the City Gas Company of Norfolk, Norfolk, Va., March 18, 1920"	9912–9959

Document No.	Norfolk's Exhibit No.		Record Page No.
		City of Norfolk's exhibits introduced into the record in accordance with reservations made by Counsel for the Commission and by Counsel for the Virginia Electric & Power Company, page 376 of the transcript of testimony taken at the hearing held on April 16, 1941.	
522	1	Document entitled, "A Resolution to be filed With the Securities Exchange Commission, Washington, D. C., Offering Objection of the City of Norfolk to Divesting the Virginia Electric and Power Company of Its Transportation and Gas Properties and Operations in the City of Norfolk"	9960–9961

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Document No.	Norfolk's Exhibit No.		Record Page No.
523		Notice of and Order of this Commission dated March 27, 1941, for Hearing	9962
524		Commission Minute Memorandum dated April 16, 1941	9963
525		Request for Oral Argument and Leave to File Written Memorandum of Argument, filed with this Commission April 18, 1941	9964-9965
526		Commission Minute Memorandum dated April 19, 1941	9966
527		Telegram dated April 19, 1941, from Francis P. Brassor to William E. Tucker	9967
528		Commission Minute Memorandum dated April 23, 1941	9968
529		Commission Minute Memorandum dated April 24, 1941	9969
530		Memorandum of Argument Upon Application For an Order Declaring Applicant Not To Be A Gas Utility Company, filed with this Commission April 24, 1941	9970-10,000
		VOLUME XXV	
531		Brief on Behalf of Counsel For the Public Utilities Division of this Commission, filed with this Commission April 4, 1941	10,001-10,055
532		Resolution Offering Objection of the City of Norfolk to Divesting the Virginia Electric & Power Company of Its Transportation and Gas Properties and Operations in the City of Norfolk, filed with this Commission April 24, 1941	10,056-10,057
533		Findings and Opinion and Order of this Commission dated June 3, 1941, Denying Applications for Declaration of Status	10,058-10,069
		Record (except for Transcripts of Hearings which have been previously incorporated herein) in the matter of Gulf States Utilities Company, File No. 31-506, incorporated in this record by order of the Commission at the oral argument held on June 5, 1941.	
534		Application pursuant to Rule U-L14-1 for an Order under Section 2(a)(4) of the Public Utility Holding Company Act of 1935, filed with this Commission March 18, 1941 by Gulf States Utilities Company	10,070-10,075

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Document No.	Commission's Exhibit No.		Record Page No.
		Commission's exhibits introduced in this record.	
535	1	Notice of and Order of this Commission dated March 27, 1941, for Hearing in matter of Gulf States Utilities Company	10,076
536	2	Copy of Securities and Exchange Commission, Holding Company Act Release No. 2656, dated March 27, 1941	10,077–10,078
	Applicant's Exhibit No.		
		Applicant's exhibits introduced in this record.	
537	1	Application Pursuant to Rule U-214-1 for an Order Under Section 2(a)(4) of the Public Utility Holding Company Act of 1935, with exhibits thereto, filed with this Commission on March 18, 1941, by Gulf States Utilities Company	10,079
538	2	Map entitled, "Gulf States Utilities Company, Gas Distribution System"	10,080
539	3	Copy of the Original Contract between Interstate Natural Gas Company, Inc., and Baton Rouge Electric Company, dated June 1, 1937, and extension agreement thereof dated November 22, 1931, and a supplemental agreement thereto dated November 22, 1939	10,081–10,099
540	4	Chart entitled, "Gulf States Utilities Company, Baton Rouge Division, Gas Department Organization Diagram"	10,100
541	5	Copies of specimen ads demonstrating the efforts of Gulf States Utilities Company to promote the sale of gas appliances	10,101–10,111
542	6	Copy of schedules showing gas rates of the Baton Rouge Electric Company, and Gulf States Utilities Company	10,112–10,115
543	7	Copies of comparative Income Statements of Gulf States Utilities Company for years 1937 to 1940 inclusive, and copy of explanatory statement thereto	10,116–10,121
544	8	Document entitled, "Gulf States Utilities Company, Gas Department—M. Cu. Ft.; Stu content of Gas; Gas Used by Company, distributed to Utimate Consumers; and Sold for resale; Gross Revenues from All Sources and From Sale of Gas to Ultimate Consumers."	10,122

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Document No.	Applicant's Exhibit No.		Record Page No.
545	9	Statement entitled, "Gulf States Utilities Company, Reconciliation of Gross Revenue of Company from All Sources with Reported Operating Revenue of the Company," for years 1938 to 1940 inclusive	10,123
546	10	Statement entitled, "Gulf States Utilities Company, Summary of Operating Revenues," for years 1931 to 1940 inclusive	10,124
547	11	Copy of the Comparative Balance Sheet of Gulf States Utilities Company, for years 1938 to 1940 inclusive	10,125-10,126
548	12	Tabulation entitled, "Gulf States Utilities Company, Summary of Utility Plant," for years 1931 to 1940 inclusive	10,127
549	13	Statement entitled, "Gulf States Utilities Company —Summary Showing in Customers Accounting Costs the Savings to Gas Department at Baton Rouge Under Joint Operation	10,128
550	14	Tabulation entitled, "Gulf States Utilities Company, Tabulation Showing Total Operating Expenses of the Louisiana Division of the Electric Department and The Gas Department With an Allocation of Customers Accounting and Collecting Expenses, Sales Promotion Expenses and Administrative and General Expenses on A Per Customer Basis for the Year Ended December 31, 1940, with copy of a statement of comments thereon	10,129-10,133
551		Notice of and Order of this Commission dated March 27, 1941, for Hearing	10,134
552		Commission Minutes Memorandum dated April 16, 1941	10,135
553		Request for Oral Argument and Leave to File Written Memorandum of Argument, filed with this Commission April 18, 1941	10,136-10,137
554		Commission Minute Memorandum dated April 19, 1941	10,138
555		Telegram dated April 19, 1941, from Francis F. Bresser to William E. Tucker	10,139
556		Commission Minute Memorandum dated April 23, 1941	10,140
557		Commission Minute Memorandum dated April 24, 1941	10,141

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Document No.		Record Page No.
558	Memorandum of Argument Upon Application For an Order Declaring Applicant Not To Be A Gas Utility Company, filed with this Commission April 24, 1941	10,142–10,170
559	Brief on Behalf of Counsel For the Public Utilities Division of this Commission, filed with this Commission April 24, 1941	10,171–10,225
560	Resolution Offering Objection of the City of Norfolk to Divesting the Virginia Electric and Power Company of Its Transportation and Gas Properties and Operations in the City of Norfolk, filed with this Commission April 24, 1941	10,226
561	Findings, Opinion and Order of this Commission dated June 3, 1941, Denying Application for Declaration of Status	10,227–10,238
562	**Notice of and Order of this Commission dated February 28, 1940, For Hearing Pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935**	10,239–10,251
563	Application and Affidavit to support thereof by the City of Las Animas, Colorado to Intervene, filed with this Commission April 6, 1940	10,252–10,263
564	**Answer of Engineers Public Service Company and Its Subsidiary Companies filed with this Commission April 6, 1940**	10,264–10,320
565	Application and Affidavit in support thereof by Consumers of Electric Energy of the City of Laramie, Albany County, Wyoming To Intervene, filed with this Commission April 8, 1940	10,321–10,328
	VOLUME XXVI	
566	Letter dated April 9, 1940 from D. C. Barnes, to Jerome Frank, Chairman, Securities and Exchange Commission, filed with this Commission April 10, 1940	10,329
567	Order of this Commission dated April 10, 1940, Denying Request for Continuance of hearing	10,330

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Document No.		Record Page No.
568	Application by Engineers Public Service Company and Its Subsidiary Companies with Respect to Notice of and Order for Hearing pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935, filed with this Commission April 12, 1940	10,331-10,360
569	Request of the State of Delaware for Permission to Intervene, filed with this Commission April 18, 1940	10,361-10,364
570	Order of this Commission dated April 19, 1940, Permitting Intervention by City of Las Animas.	10,365
571	Order of this Commission dated April 19, 1940, Permitting Intervention by State of Delaware....	10,366
572	Order of this Commission dated April 19, 1940, Denying Intervention by G. R. McConnell.....	10,367
573	Order of this Commission dated April 23, 1940, Granting Request for Continuance.....	10,368
574	Application and Affidavit in support thereof, of the City of Las Animas, Colorado, In Reference to the Light and Power System of the Western Public Service Company at Las Animas, and Reply to Answer of Engineers Public Service Company and Its Subsidiary Companies, filed with this Commission May 6, 1940.....	10,369-10,377
575	Order of this Commission dated May 20, 1940, Designating Trial Examiner.....	10,378
576	**Motion to Dismiss and Brief in support thereof, by Engineers Public Service Company and Its Subsidiary Companies, filed with this Commission May 24, 1940**.....	10,379-10,409
577	Order of this Commission dated May 25, 1940, Continuing Hearing	10,410
578	**Memorandum of Opinion and Order of this Commission dated June 1, 1940, Postponing hearing**	10,411-10,413
579	Report of the Public Utilities Division of this Commission dated March 5, 1941, Concerning Application of Section 11(b)(1) of the Public Utility Holding Company Act of 1935 to Engineers Public Service Company and its Subsidiary Companies	10,414-10,513

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Document No.		Record Page No.
580	**Statement of Tentative Conclusions and Order of this Commission dated March 11, 1941, Reconvening Hearing**	10,514–10,519
581	**Answer to Commission's Order of March 11, 1941, To Show Cause Why an Order Requiring Divestment of Certain Interests Should Not Be Entered, by the Attorneys for Respondents, filed with this Commission March 25, 1941**	10,520–10,525
582	Memorandum of Argument on Interpretation of Section 11(b)(1)(B) and Section 11(b)(1)(C) Of The Public Utility Holding Company Act of 1935 by Attorneys for Respondents, filed with this Commission March 25, 1941	10,526–10,553
583	Supplemental Memorandum of Argument in Reply to Argument Made on March 25, 1941, Concerning Application of Section 11(b)(1)(C) of the Public Utility Holding Company Act of 1935 by Attorneys for Respondents, filed with this Commission March 31, 1941	10,554–10,572
584	Minute Memorandum of this Commission granting the request of its counsel for an extension from March 31, 1941 to April 2, 1941 of time for filing a brief on the question of the retention by Engineers Public Service Company of Interests in businesses held for investment purposes	10,573
585	Memorandum Brief of this Commission, on Interpretation of Clauses (B) and (C) of Section 11(b)(1) of the Public Utility Holding Company Act of 1935, dated March 31, 1941	10,574–10,652
586	Minute Memorandum of this Commission dated April 1, 1941. Granting the request of its Counsel for permission to file a brief in excess of sixty pages in length in support of his contentions with respect to sub-paragraphs (B) and (C) of Section 11(b)(1) of the Public Utility Holding Company Act of 1935	10,653
587	Memorandum of Argument in Reply to Memorandum Brief of Commission Counsel Dated March 31, 1941, on the Interpretation of Section 11(b)(1)(B) and Section 11(b)(1)(C) of the Public Utility Holding Company Act of 1935, by Attorneys for Respondents, filed with this Commission April 8, 1941	10,654–10,683

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Document No.		Record Page No.
588	Order of this Commission dated April 21, 1941, Redesignating Trial Examiner	10,684
589	Request of the City of Norfolk for permission to intervene, filed with this Commission April 30, 1941	10,685-10,687
590	Order of this Commission, dated May 20, 1941, Granting Intervention to the City of Norfolk, Virginia	10,688
591	**Findings and Opinion and Order of this Commission, dated July 23, 1941, Requiring Divestiture of Securities, in the Matter of Engineers Public Service Company and Its Subsidiary Companies**	10,689-10,734
592	Order of this Commission, dated July 31, 1941, Reconvening Hearing, in the matter of Engineers Public Service Company and its Subsidiary Companies	10,735
593	Minute Memorandum of this Commission dated October 3, 1941 regarding the admissibility of evidence	10,736
594	Application for a Trial Examiner's Report or an Extension of Time for Filing a Request for Specific Findings and Brief in Support thereof, and Authorities Supporting Respondents' Request for a Trial Examiner's Report, filed with this Commission October 11, 1941	10,737-10,752
595	Memorandum Opinion and Order of this Commission dated October 14, 1941, Upon Application For Trial Examiner's Report	10,753-10,755
596	Letter from Mudge, Stern, Williams & Tucker, filed with this Commission November 7, 1941, requesting permission, on behalf of respondents, to file briefs exceeding sixty pages in length	10,756
597	Commission Memorandum dated November 8, 1941	10,757
598	Copy of Stipulation by and between Counsel for the Respondents and Counsel for the Securities and Exchange Commission, dated November 14, 1941, filed with this Commission November 18, 1941	10,758
599	Commission Memorandum dated December 3, 1941	10,759
600	Consent to Order filed by respondents with this Commission on December 26, 1941	10,760-10,761

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Document No.		Record Page No.
601	Amended Consent to Order filed by respondents with this Commission on December 29, 1941	10,762–10,763
602	Order of this Commission dated December 29, 1941, Granting Applications and Permitting Declarations to Become Effective Pursuant to Sections 7, 10, and 12, and Order of Divestment Pursuant to Section 11(b)(1)	10,764–10,766
603	Copy of Findings and Opinion of the Commission dated December 29, 1941	10,767–10,773
604	Commission Minute Memorandum dated January 3, 1942	10,774
	VOLUME XXVII	
605	Requested Findings and Brief on Behalf of Counsel for the Public Utilities Division of this Commission	10,775–10,923
606	Minute Memorandum of this Commission dated February 10, 1942	10,924
607	Commission Minute Memorandum dated February 17, 1942	10,925
608	Letter dated February 16, 1942 from Mudge, Stern, Williams & Tucker to this Commission requesting extension of time for filing findings and brief	10,926–10,927
609	Copy of letter dated February 17, 1942 from this Commission to Mudge, Stern, Williams & Tucker, granting request for extension of time for filing findings and brief	10,928
610	**Requested Findings and Brief on Behalf of Respondents, filed with this Commission on March 14, 1942**	**10,929–11,204**
	VOLUME XXVIII	
611	Commission Minute Memorandum dated March 17, 1942	11,205
612	Transcript of Oral Argument held on April 2, 1942	11,206–11,325
613	Commission Minute Memorandum dated April 2, 1942	11,326

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Document No.		Record Page No.
614	Application Pursuant to Section 11(c) of the Public Utility Holding Company Act of 1935, for an Extension of Time to Comply with an Order of the Commission dated July 23, 1941, pursuant to Section 11(b)(1) of said Act, filed with this Commission May 29, 1942	11,327-11,330
615	Letter dated June 10, 1942 from William E. Tucker to Orval L. DuBois, filed with this Commission June 11, 1942	11,331
616	**Findings and Opinion and Order of this Commission dated September 16, 1942, Requiring Divestiture by Holding Companies and Subsidiaries in Holding Company System of Companies and Properties Owned or Operated Thereby**	11,332-11,390
617	**Petition for Rehearing on Order dated September 16, 1942, and For Leave to Adduce Additional Evidence, filed with this Commission September 21, 1942**	11,391-11,409
618	**Memorandum Opinion and Order of this Commission dated October 6, 1942**	11,410-11,411
619	Application pursuant to Section 11(c) of the Public Utility Holding Company Act of 1935 for an extension of time to comply with an Order of the Commission dated December 29, 1941, pursuant to Section 11(b)(1) of said Act, filed with this Commission on November 25, 1942 by Engineers Public Service Company	11,412-11,417
620	Pages 200, 201, 202 and 203 of the Annual Report of Savannah Electric and Power Company to the Federal Power Commission, which report is contained in the Annual Supplement for 1940 to the Registration Statement of Engineers Public Service Company filed with the Securities and Exchange Commission, as Exhibit G8(a) thereto	11,418-11,421

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[R. pp. A1-A36]

IN THE

UNITED STATES COURT OF APPEALS,

FOR THE DISTRICT OF COLUMBIA.

IN THE MATTER
of
ENGINEERS PUBLIC SERVICE COMPANY
and
ITS SUBSIDIARY COMPANIES

ENGINEERS PUBLIC SERVICE COMPANY, EL PASO ELECTRIC COMPANY (a Delaware corporation), VIRGINIA ELECTRIC AND POWER COMPANY, SAVANNAH ELECTRIC AND POWER COMPANY, GULF STATES UTILITIES COMPANY, BATON ROUGE BUS COMPANY, INC., EL PASO ELECTRIC COMPANY (a Texas corporation), EL PASO AND JUAREZ TRACTION COMPANY, and ENGINEERS PUBLIC SERVICE COMPANY, INC.,

Petitioners,

against

SECURITIES AND EXCHANGE COMMISSION,

Respondent.

Petition to Review Orders of Securities and Exchange Commission.

The Petition of Engineers Public Service Company, El Paso Electric Company (Delaware), Virginia Electric and

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Power Company, Savannah Electric and Power Company, Gulf States Utilities Company, Baton Rouge Bus Company, Inc., El Paso Electric Company (Texas), El Paso and Juarez Traction Company, and Engineers Public Service Company, Inc., respectfully shows:

Facts and Statutes Upon Which Jurisdiction and Venue Are Based.

1. Petitioners seek review of two orders of the Securities and Exchange Commission (hereinafter sometimes called the Commission) rendered in a proceeding before the Commission instituted by it under the provisions of Section 11(b)(1) of the Public Utility Holding Company Act of 1935 (hereinafter sometimes called the Act).* Copies of the orders, the one dated September 16, 1942, and the other, a "Memorandum Opinion and Order" dated October 6, 1942, are hereto annexed as Appendix A and Appendix B, respectively.

2. The jurisdiction of this Court is invoked under Section 24(a) of the Act, which provides in part as follows:

> "Sec. 24(a). Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. * * *"

* Act of August 26, 1935, c. 687, Title I, 49 Stat. 803, U. S. C. Tit. 15, Sec. 79.

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and under Section 11(b) of the Act, which provides in part as follows:

> "Any order made under this subsection shall be subject to judicial review as provided in section 24."

Petitioners.

3. Engineers Public Service Company (hereinafter sometimes called "Engineers") and El Paso Electric Company (a Delaware corporation) (hereinafter sometimes called "El Paso (Delaware)") are corporations organized and existing under the laws of the State of Delaware. Virginia Electric and Power Company (hereinafter sometimes called "Virginia") is a corporation organized and existing under the laws of the Commonwealth of Virginia. Savannah Electric and Power Company (hereinafter sometimes called "Savannah") is a corporation organized and existing under the laws of the State of Georgia. Gulf States Utilities Company (hereinafter sometimes called "Gulf States") is a corporation organized and existing under the laws of the State of Texas. Baton Rouge Bus Company, Inc. (hereinafter sometimes called "Baton Rouge Bus") is a corporation organized and existing under the laws of the State of Louisiana. El Paso Electric Company (a Texas corporation) (hereinafter sometimes called "El Paso (Texas)") and El Paso and Juarez Traction Company (hereinafter sometimes called "Juarez") are corporations organized and existing under the laws of the State of Texas. Engineers Public Service Company, Inc. (sometimes hereinafter called "Engineers, Inc.") is a corporation organized and existing under the laws of the State of New York.

4. Engineers was incorporated in 1925 and at all times hereinafter mentioned has been and now is engaged solely in the business of owning and holding shares of stock and other securities of public utility and other corporations, financially assisting its subsidiaries, and carrying on activities incidental thereto. Engineers is duly registered as a holding company under the provisions of the Act.

El Paso (Delaware) was organized in 1924 and at all times hereinafter mentioned has been and now is engaged solely in the business of owning and holding shares of stock and other securities of its subsidiaries, financially assisting its subsidiaries, and carrying on activities incidental thereto. El Paso (Delaware) is duly registered as a holding company under the provisions of the Act.

El Paso (Delaware), Virginia, Savannah, Gulf States, Baton Rouge Bus, El Paso (Texas), Juarez, and Engineers, Inc. are subsidiary companies of Engineers and members of the holding company system of Engineers within the meaning of the Act.

El Paso (Texas) and Juarez are also subsidiary companies of El Paso (Delaware) and members of the holding company system of El Paso (Delaware) within the meaning of the Act.

5. There is set forth below the name of each company in the holding company system of Engineers, including the holding-company system of El Paso (Delaware), the nature of the business or businesses in which each such company is engaged, and the state or states in which each such company is engaged in business, as of the date of the institution of the proceeding, and as of the date of this Petition. (Indirect control of a company by Engineers is indicated by indenting the name of each such company under the name of its parent.):

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Name of Company	Character of Business	State or Country in Which Engaged in Business
Engineers Public Service Company	Holding company	—
El Paso Electric Company (Delaware)	Holding company	—
El Paso Electric Company (Texas)	Electric utility, street railway, bus and toll bridge	Texas and New Mexico
El Paso and Juarez Traction Company	Street railway and toll bridge	Mexico
Mesilla Valley Electric Company*	Electric utility	Texas and New Mexico
Virginia Electric and Power Company	Electric utility, gas utility, street railway, bus, and ice	Virginia and North Carolina
Savannah Electric and Power Company	Electric utility, street railway, and bus	Georgia
Gulf States Utilities Company	Electric utility, gas utility, ice, water, and steam	Texas and Louisiana
Baton Rouge Bus Company, Inc.	Bus	Louisiana
Puget Sound Power and Light Company**	Electric utility, gas utility, telephone, and steam	Washington
North Coast Transportation Company	Bus	Washington, Oregon, and British Columbia, Canada
Independent Stages, Inc.	Bus	Washington and Oregon
Diamond Ice & Storage Company	Ice and cold storage	Washington
Ice Delivery Company	Ice	Washington
Washington Electric Company	Holds land and water rights	—
The Key West Electric Company**	Electric utility	Florida
The Western Public Service Company (Maryland)***	Electric utility, ice and steam	Nebraska, South Dakota, Wyoming, and Colorado
The Western Public Service Company (Delaware)****	Electric utility	Wyoming
Missouri Service Company†	Electric utility, ice and water	Missouri and Iowa
The Northern Kansas Power Company†	Electric utility	Kansas
Engineers Public Service Company, Inc.‡	Mutual service company rendering services to companies in the Engineers' system	New York

* All properties of Mesilla Valley Electric Company were acquired by El Paso (Texas) in December, 1940, and Mesilla Valley Electric Company was dissolved.

** Divestment by Engineers of all its interest in Puget Sound Power & Light Company and its subsidiaries and in The Key West Electric Company was directed by order of the Commission, dated July 23, 1941. Application is now pending before the Commission for an extension for an additional year from July 23, 1942 of the time within which to comply with said order.

*** All securities of The Western Public Service Company (Maryland) owned by Engineers were sold and disposed of in January, 1942.

**** The Western Public Service Company (Delaware) was formed in December 1941, to acquire operating properties outside of the State of Nebraska, formerly owned by The Western Public Service Company (Maryland). Divestment by Engineers of its interest in the securities of this company and The Northern Kansas Power Company and Missouri Service Company was directed by Order of the Commission, dated December 29, 1941, consented to by Engineers.

† Formerly a subsidiary of The Western Public Service Company (Maryland). (See the preceding footnote.)

‡ Engineers, Inc. is a mutual service company duly approved and qualified under the provisions of Section 13 of the Act, the outstanding stock of which is owned by various of the subsidiaries of Engineers.

The Commission.

6. The Securities and Exchange Commission (hereinafter sometimes called the "Commission") was established under Section 4, Title I, of the Securities Exchange Act of 1934 and is charged with the administration of the Public Utility Holding Company Act of 1935.

Nature of the Proceedings As to Which Review Is Sought.

7. The proceeding was instituted by the Commission under and pursuant to the provisions of Section 11(b)(1) of the Act, which provides as follows:

> "It shall be the duty of the Commission, as soon as practicable after January 1, 1938:
>
> "(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: Provided, however, That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—
>
> "(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

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"(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

"(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

8. On February 28, 1940 the Commission issued its Notice and Order for Hearing which purported to initiate the proceeding under Section 11(b)(1) of the Act. Such Notice and Order, among other things, directed Engineers and its subsidiary companies therein named, including the other Petitioners, to file their answers admitting or denying the allegations contained in said Notice and Order, and further directed that a hearing be held to determine, among other things, what action, if any, was necessary and should be required to be taken by Engineers and its subsidiaries to limit the operations of the holding-company systems of Engineers, El Paso (Delaware) and The Western Public Service Company (Maryland) to a single integrated public-utility system and to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such public-utility system; and also to determine pursuant to such application as might be

made in the proceeding, the extent to which each of said registered holding companies should be permitted to continue to control one or more additional integrated public-utility systems as provided by Section 11(b)(1) of the Act; and also pursuant to such application as might be made in the proceeding, the extent to which Engineers and its subsidiary companies will be permitted to retain any interest in any business (other than that of a public-utility company as such) as provided by Section 11(b)(1) of the Act.

9. On April 5, 1940, Engineers and its subsidiary companies, including the other Petitioners, filed their answer to said Order, admitting or denying various allegations thereof, setting forth certain further allegations as to Engineers and its subsidiary companies and its and their properties and businesses, and asserting the unconstitutionality of Section 11(b)(1) of the Act as applied to them, and praying that the Commission withdraw its notice and order, or enter an order dismissing the proceeding.

10. On May 23, 1940, Engineers and its subsidiary companies, including the other Petitioners, moved to dismiss the proceeding, alleging, among other things, that the Commission had not made the investigation, studies and public recommendations required by Section 30 of the Act and that the Commission was without power to institute proceedings under Section 11(b)(1) against them until it had made such investigations, studies and recommendations, and also that it was the duty of the Commission as a condition precedent to the institution of any proceeding against them under Section 11(b)(1) of the Act to examine Engineers and its subsidiaries as required by Section 11(a) of the Act and make appropriate determinations as to the extent to which their properties and business might be con-

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fined to those necessary or appropriate to the operations of an integrated public utility system, and such other businesses as were reasonably incidental or economically necessary or appropriate to the operations of such system, after due notice to Engineers and its subsidiary companies and an opportunity for hearing; and that the prosecution of the proceeding prior to the performance of such conditions precedent would be premature and in violation of the Act and would constitute a denial to Engineers and its subsidiary companies of due process of law in violation of the Fifth Amendment to the Constitution of the United States.

11. On June 1, 1940 the Commission entered and filed in the proceeding its Memorandum Opinion, in which it construed said motion to dismiss as in effect a request for the Commission's tentative conclusions as to the utility systems and other properties and interests which could properly be retained by Engineers under the provisions of Section 11(b)(1), and stated that it would issue an appropriate statement setting forth its tentative views as to what action was necessary to bring about compliance with Section 11(b)(1); and the Commission postponed the hearings in the proceeding until such time as might be fixed by its further order.

12. On March 11, 1941, the Commission issued and filed in the proceeding a "Statement of Tentative Conclusions of the Commission and Order Reconvening Hearing." In such statement and order the Commission stated its tentative conclusions that:

> (1) Under Section 11(b)(1) the single integrated public utility system to which Engineers' holding company system should be limited was composed of the electric properties and facilities owned and oper-

ated by Virginia, but that, assuming that the interconnected electric utility properties of Gulf States constituted an integrated public utility system, it might alternatively be regarded as the single integrated public utility system within the meaning of Section 11(b)(1) of the Act;

(2) the application of clause (B) of Section 11(b)(1) precluded the retention with the electric utility properties of Virginia of the utility assets and other businesses owned or operated by Gulf States, El Paso (Texas), The Western Public Service Company (Maryland) and its subsidiaries, Puget Sound Power & Light Company and Key West Electric Company, and in the alternative would preclude the retention with the electric utility properties of Gulf States of the utility assets and other businesses of Virginia, Savannah, Key West Electric Company, The Western Public Service Company (Maryland) and its subsidiaries, and Puget Sound Power & Light Company;

and ordered that a hearing be held on March 25, 1941 and directed Engineers and its subsidiary companies to show cause at such time why the Commission should not forthwith issue an order requiring Engineers to divest itself of its interest in all its subsidiary companies except Virginia and Savannah, or (in the alternative) Gulf States, El Paso (Delaware), and Baton Rouge Bus.

13. On March 25, 1941, Engineers and its subsidiaries filed in the proceeding their answer to said Order of March 11, 1941 in which they objected to the entry forthwith of an order of divestment such as proposed in said Order of March 11, 1941 and set forth various allegations as to the procedure which they believed should be properly followed in the proceeding, and alleged that Section 11(b)(1) and each and

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every provision thereof was unconstitutional and void as applied to Engineers and each of its subsidiaries.

14. Thereafter, hearings were held in this proceeding from time to time to November 4, 1941. At such hearings evidence was introduced with respect to the operations and the relationships of Virginia, Savannah, Gulf States, Baton Rouge Bus, El Paso (Texas), Juarez, and Engineers, Inc. and their respective properties, and Petitioners introduced sworn testimony and documentary evidence in support of the positions taken by them. Certain evidence as to the constitutionality of Section 11(b)(1) was formally proffered on behalf of Engineers and its subsidiary companies, but was excluded by the trial examiner pursuant to instructions of the Commission as more fully set forth in paragraph 15 of this Petition. No evidence, however, was introduced by Petitioners relating to the application of the standards set forth in clauses (A) and (C) of Section 11(b)(1) of the Act to the retention of the utility systems of Gulf States and/or El Paso (Texas) as systems additional to the public utility system of Virginia, for the reason that the Commission had ruled and directed that clause (B) of Section 11(b)(1) as interpreted by it prevented and precluded the consideration of any such evidence.

15. The Commission on July 23, 1941 issued its Findings and Opinion and Order Requiring Divestiture of Securities in which it ruled, among other things,—

> (1) that it would instruct its trial examiner to exclude evidence proffered by Engineers and its subsidiary companies bearing solely upon the question of the constitutionality of the Act;
>
> (2) that clause (B) of Section 11(b)(1) of the Act should be construed as requiring that any addi-

tional system or systems to be retained be located in the same State as the principal system, or in a State or States adjoining such State, or in a foreign country contiguous with such State, and the Commission rejected the interpretation contended for by Engineers and its subsidiaries, namely, that said clause (B) permits the retention of an additional system or systems located in any one State or in States which adjoin each other, whether or not such additional State or States are adjacent to the State or States in which the principal system was located, or in a foreign country contiguous to such additional State or States;

(3) that the electric utility systems of Virginia and Gulf States severally constituted integrated public utility systems within the meaning of the Act, either of which might be retained by Engineers as its principal system;

(4) that if the electric utility system of Virginia were designated as the principal system, then under clause (B) of Section 11(b)(1) Engineers could not retain the public utility systems and other businesses of Gulf States or El Paso (Delaware) or its subsidiaries and, on the other hand, if the integrated public electric utility system of Gulf States were designated as the principal system, then under said clause (B) Engineers could not retain the public utility systems and other businesses of Virginia or Savannah;

(5) that without conceding the right of Engineers to such a determination, it would proceed to determine what additional systems and incidental businesses could be retained in combination with the systems of Virginia and Gulf States as the principal systems, and would instruct its trial examiner and counsel accordingly;

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(6) that, in any event, whether Virginia or Gulf States should be selected as the principal system, Engineers could not retain the properties owned and operated by The Western Public Service Company and its subsidiaries, by Puget Sound Power & Light Company and its subsidiaries, and by Key West Electric Company; and

(7) that Engineers should be required to divest itself of all its interest in Puget Sound Power & Light Company, The Western Public Service Company, and Key West Electric Company.

By said Order, Engineers was directed to sever its relationship with Puget Sound Power & Light Company and its subsidiaries and the Key West Electric Company, by disposing or causing the disposition of its direct or indirect control and holding of securities issued by said companies, Engineers and said companies to comply with said direction within one year from the date of the Order, without prejudice to their right to apply for additional time as provided in subparagraph (c) of Section 11 of the Act.

16. Counsel for the Public Utilities Division of the Commission filed with the Commission on February 10, 1942 Requested Findings of Fact and a brief in support thereof. On March 15, 1942, Petitioners' Requested Findings of Fact were filed with the Commission, together with a brief in support of such requested findings. Oral argument was had before the Commission on April 2, 1942. On September 16, 1942, the Commission issued its Order of said date, together with its related Opinion and Findings, in which, among other things, it made the findings hereinafter complained of in paragraph 22 of this Petition.

17. On September 21, 1942, Petitioners filed with the Commission a Petition for Rehearing and for leave to

adduce additional evidence on the question of the constitutionality of Section 11(b)(1) of the Act and as to compliance with the standards of clauses (A) and (C) of Section 11(b)(1) of the Act. On October 6, 1942, the Commission issued herein in the proceeding its Memorandum Opinion and Order denying such Petition and reaffirming said Order of September 16, 1942, except in so far as said Memorandum Opinion and Order extended until 15 days after its date the time within which Engineers might petition to retain the electric utility system of Gulf States instead of the electric utility system of Virginia.

18. In their briefs, requests for specific findings of fact, and oral argument, Petitioners have from time to time specified the findings of fact and conclusions to which they believed they were entitled by the record, and the construction of the Act for which they have contended. Petitioners have at all times asserted and reserved and refused to waive their constitutional and legal rights. The objections to the Order of the Commission herein set forth and the points hereinafter specified upon which Petitioners intend to rely have all been duly urged before the Commission.

19. Petitioners are aggrieved by said Order of September 16, 1942 and said Memorandum Opinion and Order of October 6, 1942 because, by reason thereof, Engineers is required to divest itself of its valuable investments in all its subsidiaries (in addition to those which it is required to dispose of by the Orders of the Commission dated July 23, 1941 and December 29, 1941) except Virginia, and is also required to divest itself of valuable interests now controlled by it through Virginia, namely, the transportation business and the gas utility and related gas appliance merchandising business of Virginia, and El Paso (Delaware) is required

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to divest itself of its valuable investment in Juarez and of valuable interests now controlled by it through El Paso (Texas), namely, the street railway and bus transportation business of El Paso (Texas); and by reason thereof also, Virginia, Savannah, Gulf States, Baton Rouge Bus, El Paso (Texas) and Juarez will be deprived of the economies, benefits and advantages which they now enjoy by reason of being part of the holding-company system of Engineers.

Points On Which Petitioners Intend to Rely.

20. Petitioners are advised by counsel and allege that the Orders to be reviewed hereunder, namely, the Commission's Orders of September 16, 1942 and October 6, 1942, are invalid and void and should be set aside in their entirety, for the reason that Section 11(b)(1) of the Act, as interpreted by the Commission in its Findings and Opinion dated September 16, 1942 and as applied in its said Orders, is in conflict with the Constitution of the United States and void and of no force and effect, for the reasons, among others, that said Section 11(b)(1):

(a) invades the reserved powers of the several States in violation of the Tenth Amendment to the Constitution of the United States in its interference with intrastate transactions and its attempted control of intrastate corporations in the exercise of charter powers given them by the States of their incorporation;

(b) constitutes an unlawful attempt to control and regulate commerce with foreign nations, among the several states, and with the Indian tribes, in excess of any powers conferred upon Congress to that end;

(c) deprives Petitioners and their respective security holders of liberty and property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States;

(d) constitutes a taking of the private property of Petitioners and of their respective security holders for public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States;

(e) is unjust, unreasonable, arbitrary, and capricious and has no real or substantial relation to any proper purpose sought to be accomplished thereby and is in violation of the Constitution of the United States and of the Fifth Amendment thereto;

(f) fails to prescribe with requisite certainty any standard of conduct thereunder for holding companies, subsidiary companies or affiliates and fails to prescribe with requisite certainty the obligations imposed thereby on holding companies, subsidiary companies and affiliates, in violation of the Fifth Amendment to the Constitution of the United States;

(g) constitutes an unlawful delegation of legislative power in violation of Section 1 of Article I of the Constitution of the United States, in that it contains no adequate or reasonable standards upon which the action of the Commission, which is charged with the duty of administering such section and issuing rules, regulations and orders thereunder, is to be determined and controlled; and

(h) constitutes an unlawful delegation of judicial power in violation of Section 1 of Article III of, and the Fifth Amendment to, the Constitution of the United States in that it deprives Petitioners of their right to a judicial determination of all questions of fact affecting their constitutional rights, or affecting the jurisdiction of the Commission to exercise the powers attempted to be delegated to it, since, under

Section 24(a) of the Act the findings of the Commission as to the facts, if supported by substantial evidence, are conclusive upon the review of any order or rule of the Commission.

21. The Commission erred in its Findings and Opinion of July 23, 1941, in ruling, and in directing its trial examiner, that testimony proffered on behalf of Engineers and its subsidiaries relating to the constitutionality of Section 11(b)(1) of the Act should not be received in evidence in the proceeding. The testimony so proffered and directed to be refused tended to show that the provisions of Section 11(b)(1) had no real or significant relation to the object sought to be accomplished by the Act and that the regulatory devices prescribed by Section 11(b)(1) of the Act had no real or substantial relation to any of the evils which the Act was designed to eliminate.

22. The orders to be reviewed hereunder are invalid and void and should be set aside (a) in so far as they direct Engineers to divest itself of its investments in, and sever its relationships with, Savannah, Gulf States, Baton Rouge Bus, and El Paso (Delaware) and its subsidiaries, and to cease to operate, directly or indirectly, the transportation properties and business and the gas utility properties and business of Virginia and (b) in so far as they direct El Paso (Delaware) to sever its relationship with Juarez and to cease engaging, directly or indirectly, in the transportation and toll bridge business of El Paso (Texas) for the reasons, among others, that:

(a) the Commission erred in finding and ruling that under clause (B) of Section 11(b)(1) of the Act any additional system or systems which may be retained by a holding company must be located in the same state in which is located the principal system or in a state

or states adjoining such state, or in a foreign country contiguous to such state, and in ruling that in no event could the systems of Gulf States and El Paso (Texas) be retained as systems additional to the principal system of Virginia; and in directing its trial examiner, on the basis of such ruling, to exclude all evidence relating to the application of the standards of clauses (A) and (C) of Section 11(b)(1) to the retention of the public utility system of Gulf States and El Paso (Texas) as systems additional to the public utility system of Virginia considered as the principal system;

(b) the Commission erred in finding, without substantial evidence to support its findings and contrary to substantial evidence, that (1) the severance of the electric system of Savannah from common control by Engineers with the electric system of Virginia and (2) the severance of the electric system of El Paso (Texas) from common control by Engineers with the electric system of Gulf States would not result in a loss of substantial economies and in finding that the continued combination of the electric system of Virginia and the electric system of Savannah, and the continued combination of the electric system of Gulf States and the electric system of El Paso (Texas) are respectively so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation; and having found that the electric properties of Savannah comply with the standards of clause (B) of Section 11(b)(1) in relation to the electric properties of Virginia and that the electric properties of El Paso (Texas) comply with the standards of said clause (B) in relation to the electric system of Gulf States, the Commission further erred in requiring and directing that said electric properties of Savannah be divested and disposed of by Engineers if the electric system of Virginia be retained and that the electric properties of El Paso (Texas) be divested and disposed

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of if the electric system of Gulf States be retained. In making the findings complained of, the Commission further erred in construing clause (C) of Section 11(b)(1) as requiring or permitting it to take into account the geographical relationship of the primary system and the additional system or the distance between such systems in considering whether the continued combination of the primary and additional systems is so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation;

(c) the Commission erred in ruling that the gas utility properties of Virginia did not constitute part of the same single integrated public utility system as the electric utility properties of said Company and that the gas utility properties of Gulf States did not constitute a part of the same single integrated public utility system as the electric utility properties of said Company; and, therefore, the Commission erred in directing by its Order that said gas utility properties and the gas appliance merchandising businesses incidental thereto be divested and disposed of by Engineers;

(d) the Commission erred (even if it be assumed, contrary to fact and law, that the gas utility properties of Virginia do not constitute part of the same single integrated public utility system as the electric utility properties of said Company and the gas utility properties of Gulf States do not constitute part of the same single integrated public utility system as the electric utility properties of said Company) in finding, without substantial evidence to support its findings, and contrary to substantial evidence, (1) that the severance of the gas utility properties of Virginia and the gas appliance merchandising business incidental thereto from common control by Engineers with the electric system of Virginia and (2) that the severance of the

gas utility properties of Gulf States and the gas appliance merchandising business incidental thereto from common control by Engineers with the electric system of Gulf States, would not result in the loss of substantial economies, and, therefore, the Commission having found in each case that said gas utility properties comply with the provisions of clauses (B) and (C) of Section 11(b)(1) of the Act, the Commission erred in directing by its Order that said gas utility properties and the gas appliance merchandising businesses incidental thereto be divested and disposed of by Engineers;

(e) the Commission erred in finding, without substantial evidence to support its findings, and contrary to substantial evidence, (1) that the transportation business of Virginia is not reasonably incidental to, or economically necessary or appropriate to the operations of the integrated electric utility system of Virginia; (2) that the transportation business of Savannah is not reasonably incidental to or economically necessary or appropriate to the operations of the integrated electric utility system of Savannah; (3) that the transportation business of Baton Rouge Bus is not reasonably incidental to or economically necessary or appropriate to the operations of the integrated electric utility system of Gulf States; (4) that the water business of Gulf States is not reasonably incidental to or economically necessary or appropriate to the operations of the integrated electric utility system of Gulf States; (5) that the ice business of Gulf States is not reasonably incidental to or economically necessary or appropriate to the operations of the integrated electric utility system of Gulf States; (6) that the transportation and toll bridge businesses of El Paso (Texas) are not reasonably incidental to or economically necessary or appropriate to the operations of the integrated electric utility system of El Paso (Texas); (7) that the street railway and toll bridge businesses of Juarez

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are not reasonably incidental to or economically necessary or appropriate to the operations of the integrated electric utility system of El Paso (Texas); and the Commission erred in ordering that said transportation businesses of Virginia and Savannah and Baton Rouge Bus and said water and ice businesses of Gulf States be divested by Engineers and that said transportation and toll bridge businesses of El Paso (Texas) and said street railway and toll bridge businesses of Juarez be divested and disposed of by Engineers and by El Paso (Delaware);

(f) the Commission erred in making its findings as to incidental business complained of in the preceding sub-paragraph (e) in not construing Section 11(b)(1) of the Act, as requiring the Commission to find and determine that a non-utility business is "reasonably incidental or economically necessary or appropriate to the operations of one or more integrated public utility systems" if it finds that:

(a) The retention of such business is necessary or appropriate in the public interest; *or*

(b) the retention of such business is necessary or appropriate for the protection of investors; *or*

(c) The retention of such business is necessary or appropriate for the protection of consumers; *and*

(d) The retention of such business is not detrimental to the proper functioning of the integrated utility system.

There is sufficient evidence in this proceeding to constitute adequate proof that each of the non-utility businesses referred to in the foregoing subparagraph (e) is not detrimental to the proper functioning of the respective related public utility system referred to in said subparagraph (e) and to support in respect of each of such non-utility businesses one or more of the findings referred to in the foregoing clauses (a), (b), and (c), and there is no substantial evidence in

this proceeding to the contrary; and the Commission erred in not making such findings and in failing to give effect to the last sentence of Section 11(b)(1) of the Act, as a mandatory clause directing the Commission to permit the retention of other businesses if such findings be made in respect thereof, and in that, without warrant of law, the Commission has attempted by administrative action to impose an additional requirement not set forth in Section 11(b)(1), namely, that such a non-utility business, in order that it may be retained, must bear an operating relationship to the retainable public utility system or systems. The Commission has also erred, in making the findings in the preceding subparagraph (e) complained of (even if it be assumed, contrary to law, that the existence of any operating relationship between the public utility system and non-utility business is relevant in determining whether a non-utility business may be retained), in finding, without substantial evidence and contrary to substantial evidence, that the non-utility businesses hereinabove referred to do not bear any such operating relationship to the operations of any of the respective related public utility system or systems above referred to;

(g) the Commission erred in finding, without substantial evidence to support its findings and contrary to substantial evidence, that the electric utility properties of Gulf States, situated in and near Alvin, Texas, do not constitute an integrated electric public utility system within the definition contained in Section 2(a)(29)(A) of the Act and that Engineers would not be entitled to retain the same as a system additional to the electric utility properties of Gulf States as the principal system. In making such finding, the Commission further erred in construing the Act as requiring or permitting it to take into account in determining whether such properties constituted an integrated public utility system, the fact that such

properties were surrounded by territory served by another company not included in the Engineers' system, or the fact that such properties depended upon such other company for their electric energy;

(h) the Commission erred in finding, without substantial evidence to support its findings and contrary to substantial evidence, that the retention of Engineers, Inc. is not reasonably incidental or economically necessary or appropriate to the operations of Engineers' holding-company system and in ordering the separation of Engineers, Inc., from the Engineers' holding-company system;

(i) the Commission erred in not making the investigation, studies and public recommendations required by Section 30 of the Act prior to the institution of proceedings against the Petitioners under Sec. 11(b)(1) of the Act, or during the course of such proceedings and prior to the entry of the Orders herein complained of;

(j) the Commission erred in itself selecting, in the alternative, either Virginia or Gulf States as the principal system of Engineers, and requiring in the Order of September 16, 1942, that Engineers should make its selection of such principal system as between Virginia and Gulf States and within fifteen days from the date of such Order, and in requiring in the Order of October 6, 1942, that Engineers make its selection of such principal system as between Virginia and Gulf States and within fifteen days from the date of that Order;

(k) the Commission erred, for the reasons hereinabove set forth, in denying by its Memorandum Opinion and Order of October 6, 1942 the Petition of Petitioners for a rehearing and in failing to vacate or modify its said Order of September 16, 1942 as prayed in such Petition for Rehearing, and

in failing to reopen the proceeding for the taking of additional evidence, as also prayed in said Petition; and

(l) the Commission erred in failing to make the findings requested by Petitioners, in erroneously disregarding competent and relevant evidence which was substantial and uncontradicted and which constituted adequate proof of the contentions of Petitioners and sufficient to support and require the findings requested by Petitioners, and erred in the same respects in making the findings herein complained of.

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23. Since said Order of the Commission, dated September 16, 1942, by its terms, must be complied with within one year unless extended by the Commission in its discretion, it is essential that the review of said Order and of the further Memorandum Opinion and Order of the Commission, dated October 6, 1942, affirming said Order, operate as a stay thereof.

24. No previous application for the relief sought in this Petition has been made to any other court or judge.

The Relief Prayed.

WHEREFORE, your Petitioners respectfully pray that this Honorable Court

1. Review said Order of the Commission, dated September 16, 1942, as affirmed by said Memorandum Opinion and Order dated October 6, 1942;

2. Stay said Orders of the Commission during the pendency of such review;

3. Direct said Commission to reopen the proceeding for the purpose of permitting Petitioners to introduce evidence therein for the purpose of establishing that the provisions of Section 11(b)(1) of the Act, as applied to Petitioners, are unconstitutional, void and of no force and effect under the Constitution of the United States and the amendments thereto, particularly in that the provisions of Section 11(b)(1) and said Order as applied to the Petitioners have no real or significant relation to the objects sought to be accomplished by the Act and in that the regulatory devices prescribed by Section 11(b)(1) of the Act and attempted to be enforced by the Order have no real or substantial relation to any of the evils which the Act was designed to eliminate, as well as in the other respects hereinabove in this Petition set forth; and also for the purpose of permitting Petitioners to adduce therein evidence relating to the application of the standards of clauses (A) and (C) of Section 11(b)(1) to the retention of the utility systems of Gulf States and/or El Paso (Texas) as systems additional to the public utility system of Virginia considered as the principal system;

4. Set aside said Orders in their entirety;

5. Grant such other and further relief as to the Court may seem just and equitable.

Respectfully submitted,

ENGINEERS PUBLIC SERVICE COMPANY

By DONALD C. BARNES
President

EL PASO ELECTRIC COMPANY
(a Delaware corporation)

By DONALD C. BARNES
Vice President

VIRGINIA ELECTRIC AND POWER COMPANY

By DONALD C. BARNES
Vice President

SAVANNAH ELECTRIC AND POWER COMPANY

By DONALD C. BARNES
Vice President

GULF STATES UTILITIES COMPANY

By DONALD C. BARNES
Vice President

BATON ROUGE BUS COMPANY, INC.

By DONALD C. BARNES
Vice President

EL PASO ELECTRIC COMPANY
(a Texas corporation)

By DONALD C. BARNES
Vice President

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EL PASO AND JUAREZ TRACTION COMPANY

By DONALD C. BARNES
Vice President

ENGINEERS PUBLIC SERVICE COMPANY, INC.

By DONALD C. BARNES
President

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HUNTON, WILLIAMS, ANDERSON, GAY & MOORE,
Electric Building,
Richmond, Virginia.

Of Counsel.

UNITED STATES OF AMERICA,
STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

DONALD C. BARNES, being duly sworn, deposes and says:

I am an officer, to wit: President of Engineers Public Service Company; a Vice President of El Paso Electric Company (a Delaware corporation); a Vice President of Virginia Electric and Power Company; a Vice President of Savannah Electric and Power Company; a Vice President of Gulf States Utilities Company; a Vice President of Baton Rouge Bus Company, Inc.; a Vice President of El Paso Electric Company (a Texas corporation); a Vice President of El Paso and Juarez Traction Company; and President of Engineers Public Service Company, Inc.; each of said corporations being one of the Petitioners named in the foregoing Petition. I have read the foregoing Petition and know the contents thereof. The allegations contained therein are true to the best of my knowledge and belief.

DONALD C. BARNES.

Subscribed and sworn to before me
this 12th day of November, 1942.

THADDEUS J. POL

THADDEUS J. POL,
Notary Public
Queens Co. Clk's No. 2827, Reg. No. 2380
Cert. N. Y. Co. Clk's No. 2, Reg. No. 4 P 214
Commission Expires March 30, 1944

[NOTARIAL SEAL]

Petitioners' Appendix A.

Order Dated September 16, 1942 Requiring Divestiture by Holding Companies and Subsidiaries in Holding Company System of Companies and Properties Owned or Operated.

(Not here printed as it appears at page 159 of this Appendix.)

Petitioners' Appendix B.

Memorandum Opinion and Order Denying Rehearing on Order Dated September 16, 1942, and for Leave to Adduce Additional Evidence.

(Not here printed as it appears at page 163 of this Appendix.)

[Document No. 616—R. pp. 11332-11387]

SECURITIES AND EXCHANGE COMMISSION,

PHILADELPHIA.

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES,
Respondents,
File No. 59-4.
Public Utility Holding Company Act of 1935—Section 11 (b) (1).

Findings and Opinion of the Comission.

Integration of Holding Company Systems.

Selection of Principal System.

Where a registered public utility holding company which is a respondent in proceedings under Section 11 (b) (1) failed to indicate a choice of the single system it desires to retain, and requested that the Commission find in the alternative what additional systems and what other businesses may be retained along with one or the other of two integrated public utility systems, held that a finding in the alternative would be made because the company has indicated that it will choose one of two specified principal systems, because either alternative would constitute an appropriate single system, because the choice between them is close, because the task is not unduly complicated, and because the requirements of speedy and orderly procedure will not be violated.

OTHER BUSINESSES RETAINABLE.

Retention of certain interests in non-utility enterprises is not found to be reasonably incidental or economically necessary or appropriate to the operations of retainable integrated utility systems.

Where close operating relationship between the ice business and the electric department of a utility company is shown, and the former is shown to be operated primarily for the benefit of the latter and not as a separate or independent enterprise, held the ice business may be retained under the "other business" clauses of Section 11 (b) (1).

Where close operating relationship between the appliance merchandising and the electric departments of a utility company is shown, and the former is shown to be operated primarily for the benefit of the latter and not as a separate or independent enterprise, held the appliance business may be retained under the "other business" clauses of Section 11 (b) (1).

Where close operating relationship between the steam and the electric departments of a utility company is shown, held the steam business may be retained under the "other business" clauses of Section 11 (b) (1).

Where a registered public utility holding company held securities of a non-subsidiary public utility company, held, in the absence of any evidence with respect to the retainability of such securities, they must be disposed of.

Where, in support of the contention that certain non-utility interests may be retained under Section 11 (b) (1), it is claimed that difficulty would be presented in attempting to dispose of such interests, held difficulty of disposition has no relation to permissibility of retention under Section 11 (b) (1), but is relevant only to the time of compliance with orders of disposition.

Where the operations of a registered public utility holding company holding several utility systems and incidental businesses must be limited under the statute to a single integrated electric utility system and certain "other businesses", held the retention of an interest in the mutual service company formerly performing services for the entire holding company system is not reasonably incidental or economically necessary or appropriate to the permissible operations within the meaning of Section 11 (b) (1).

ADDITIONAL SYSTEMS.

Substantial Economies under Section 11 (b) (1) (A).

In applying the provision in Section 11 (b) (1) (A) that an additional system may be retained if a loss of substantial economies would follow its divestment consideration must be given not only to the increased expenditures but also to the economic advantages attending separation.

Loss in economies claimed to attend separation of integrated utility systems found to be not substantial within the meaning of Section 11 (b) (1) (A).

ADDITIONAL SYSTEMS.

Localized Management, Efficiency and Effectiveness of Regulation under Section 11 (b) (1) (C).

Where a registered public utility holding company controls utility systems in different widely scattered sections of the country, held the standard of localized management in Section 11 (b) (1) (C) is not satisfied by the retention of such systems in combination.

Appearances:

JAMES FISCHGRUND,
JOSEPH AUERBACH, and
HARLOW B. LESTER,
for the Public Utilities Division of the Commission.

MUDGE, STERN, WILLIAMS & TUCKER, New York, New York, by William E. Tucker and C. D. G. Breckinridge, and

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE, Richmond, Virginia, by T. Justin Moore, and Richard W. Emory, for Engineers Public Service Company and its subsidiaries.

This is a proceeding instituted under Section 11 (b) (1) of the Public Utility Holding Company Act with respect to

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Engineers Public Service Company (hereinafter referred to as Engineers), a registered holding company, and each of its subsidiaries, to determine what action is necessary in order that the Engineers holding company system shall so limit its operations as to comply with the standards of that Section.[1] In our prior determinations in this proceeding we held that Engineers, regardless of whether its "single" or "principal" integrated public utility system will be Virginia Electric and Power Company (hereinafter referred to as Virginia) or Gulf States Utilities Company (hereinafter referred to as Gulf), cannot consistently with Clause (B) of Section 11 (b) (1) retain any interest in its properties located in Washington (the Puget Sound Power and Light Company and its subsidiaries), Florida (the Key West Electric Company), or Colorado, Iowa, Kansas, Missouri, South Dakota and Wyoming (The Western Public Service Company and its subsidiaries). If Virginia's electric utility system is adopted as Engineers' principal system[2] Clause (B) of Section 11 (b) (1) also precludes the retention of Gulf or any of the Louisiana, Texas, New Mexico and Mexico properties, and, conversely, if Gulf's electric utility system is so adopted, Clause (B) precludes retention of Virginia or the Georgia properties.

With respect to these properties, which may be retained under Clause (B), therefore, there are now before us for decision two general questions which we answer first on the assumption that Engineers' principal system will be Virginia's electric utility system and then on the assumption that it will be Gulf's.[3]

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[1] The history of the proceeding is contained in the attached appendix.

[2] In this opinion the term "principal system" will be used to refer to the "single integrated public-utility system" mentioned in Section 11 (b) (1). Under that Section a registered holding company may retain the "single" system, such "additional" integrated systems as meet the standards of Clauses (A), (B), and (C), and such "other businesses" as meet the standards of the Section in relation to the retainable integrated utility systems. Because the "additional system" standards must be applied in relation to a "single" system and because the "other business" standards must be tested in relation to the retainable utility systems, the designation of at least the *maximum* outlines of a "single" or "principal" integrated utility system is a necessary starting point.

[3] We indicated in our prior opinion in this proceeding (*Engineers Public Service Company, et al.*, 9 S. E. C. ....., (1941) Holding Company Act Release No. 2897), that the respondents are not entitled as a matter of right under Sec-

On the assumption that Virginia's electric utility system is to be Engineers' principal system, the first question is: Which of the Georgia and Virginia properties in the Engineers system—the transportation, ice, and appliance businesses of Virginia and the transportation and appliance businesses of Savannah Electric and Power Co.—can be retained as other businesses under the standards of Section 11 (b) (1)?

On the same assumption, the second question is: Which of the remaining utility properties in the Engineers system—the retention of which as additional integrated public utility systems (in addition to Virginia's electric system) is not barred by Clause (B) of Section 11 (b) (1)—can also be retained as such under the remaining standards of Section 11 (b) (1) and the definitions in Section 2 (a) (29)?

Similar questions arise with respect to the properties in Louisiana, Texas, New Mexico, and Mexico if Gulf is to be Engineers' principal system.

Regardless of which of the two alternative possibilities becomes Engineers' principal system and which properties may be retained along with it, there are also before us two further questions:

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tion 11 (b) (1) to an alternative finding of this character. As we said there: "Our function under the Section is to determine whether or not any 'additional' integrated systems may be retained under the standards of Clauses (A), (B) and (C) in conjunction with a 'single' integrated system. Strictly speaking, of course, there can be no determination permitting the retention of an 'additional' system until after the 'single' system has been selected." But, since the choice in this case between Virginia and Gulf is a close one and it is within our discretion to make findings in the alternative as requested by respondents, we have concluded that it is reasonable to do so here. In this connection, we note that unlike the North American system the size and complexity of the Engineers system is not such as to render this procedure unduly difficult.

Moreover, we wish to emphasize here what we said in our prior opinion in this proceeding concerning respondent Engineers' right to choose its principal system: "The Act does not expressly state whether the selection of the 'single integrated public-utility system' retainable as the principal system is for the holding company to make solely on the basis of its own wishes, or for us to make on the basis of evidence and with due regard to the public interest and the protection of investors or consumers. An intermediate position might be that the holding company may make the selection subject to our approval or disapproval based upon evidence and judged in the light of the foregoing standards." However, we do not think it necessary to decide these questions under the circumstances presently before us, since the respondents have indicated that they would prefer to retain one of these two systems as their principal system and the record before us does not render either choice inappropriate.

(1) Whether Engineers may retain its holdings of 51,357 shares, representing 8.5% of the outstanding common stock of the El Paso Natural Gas Company; and

(2) What action must be taken with respect to Engineers Public Service Company, Inc., the mutual service company of Engineers' holding company system, in reducing that system to the operations permitted by Section 11 (b) (1).

I. The Limitations on the Operations of the Engineers Holding Company System if the Electric Utility System of Virginia Electric and Power Company is its Single Integrated Public Utility System.

Virginia Electric and Power Company, a subsidiary of Engineers, operates an electric utility system and a gas utility system (See *Virginia Electric and Power Company*, 9 S. E. C. ..... (1941), Holding Company Act Release No. 2791) and is also engaged in the street railway, bus, ice and appliance merchandising businesses. It is not a holding company, but is exclusively an operating company. Its plant account, as of December 31, 1940, and its operating revenues, net operating revenues, gross income and net income for the twelve months ended that date were as follows:

	Plant Account[b]	Operating Revenues[b]	Net Operating Revenues[c]	Gross Income[c]	Net Income[c]
Electric[a]	$68,007,540	$14,909,800	$ 5,620,751	$ 5,513,393	$ 3,982,839
Gas	6,051,309	1,054,987	274,185	270,370	120,892
Street Railway	10,251,529	2,447,109	43,077*	38,836*	38,836*
Bus	3,309,431	2,580,317	151,467	145,329	63,698
Total	$87,619,809	$20,992,213	$ 6,003,326[d]	$ 5,890,256	$ 4,128,593

* Indicates deficit.

[a] Includes ice business with plant account of $14,775 and gross revenues of $9,619.

[b] Based on Virginia's Annual Report to Stockholders.

[c] Based on Virginia's proposed method of allocating interdepartmental expenses.

[d] Subtracting interdepartmental eliminations in the amount of $3,046 leaves a total net operating revenue of $6,000,280.

Virginia's electric system serves an area of approximately 13,500 square miles in eastern Virginia and northeastern North Carolina. As of December 31, 1940, the system's electric customers numbered about 170,000 in an area which has a total population of about 832,000, and which includes approximately 510 communities (224 of them with a population in excess of 100). The principal cities in which electric energy is furnished and their approximate 1940 populations are:

VIRGINIA

Richmond	193,000	Norfolk	144,000
Portsmouth	51,000	Petersburg	31,000
Suffolk	11,000	Fredericksburg	10,000
Hopewell	9,000	South Norfolk	8,000

NORTH CAROLINA

Roanoke Rapids	8,500

The system has a generating capacity of 213,635 kw. (of which steam generating capacity amounts to 181,000 kw.) and, by its 5,130 pole miles of transmission and distribution lines and 80 miles of underground conduits, is completely interconnected. The generating plants supply the requirements of the system and, in addition, some interchange (net) with nearby utilities. Among the company's facilities are two 110,000 volt interconnections with Carolina Power & Light Company, a non-affiliated company, and three interconnections with Virginia Public Service Company, also a non-affiliated company. In 1940, total output was 879,046,000 kwh. and total sales amounted to 729,603,000 kwh. Those electric properties located in Virginia are subject to regulation by the Virginia State Corporation Commission, and those located in North Carolina by the North Carolina Utilities Commission. We have found that the electric Utility system owned and operated by Virginia constitutes an integrated public utility system within the meaning of Section 2 (a) (29) (A) of the Act. (*Engineers Public Service Company, supra*, n. 3).

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A. *The "Other Businesses" Sought to be Retained by Engineers if Virginia's Electric Utility System is Engineers' Principal System.*

In addition to producing, transmitting and distributing electricity, and operating a gas system, Virgina, as we have pointed out, conducts certain non-utility enterprises—a transportation system, an ice business and a gas and electric appliance merchandising business. Respondents seek to retain all these businesses along with Virginia's electric system on the ground that they are reasonably incidental or economically necessary or appropriate to the operation of that electric system within the meaning of Section 11 (b) (1).

Section 11 (b) (1) directs the Commission:

> "To require . . . that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system. . . ."

The Section further provides in its last sentence:

> "The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

Respondents urge that the last sentence of Section 11 (b) (1) relates back to the "other business" clause in the first sentence and sets out standards in accordance with

which the incidental nature or economic appropriateness of a proposed "other business" must be measured. We agree with respondents that the last sentence of the Section must be read together with the "other business" clause in the first sentence. And the provisions of that last sentence expressly authorize us, in determining whether non-utility operations are reasonably incidental or economically necessary or appropriate to the basic activity of a public utility holding company—the operation of an integrated public utility system—*to* consider whether the continuance of the non-utility operations is "necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems." But these provisions do not contain isolated standards. They are a closely knit part of a statute which has a clearly expressed policy, and they appear in a section of that statute which is designed to limit the operations of a holding company system to a single integrated public utility system and to reasonably incidental or economically necessary or appropriate non-utility businesses. In applying the statute, therefore, it must be remembered that the phrases "public interest," "protection of investors or consumers" and "detrimental to the proper functioning of such system" not only illuminate the meaning of "reasonably incidental or economically necessary or appropriate" but themselves derive content from their context in the section and the statute.

Moreover, Congress did not say that "the Commission shall permit the retention of a business which it finds to be necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems." Rather it instructed[4] us to examine these factors in deter-

[4] The Conference Committee Report on the Act [H. R. Rep. No. 1903, 74th Cong., 1st Sess. (1935)] says, at pp. 69-70, of this last sentence in Section 11 (b) (1):

> "The Commission is given express authority to permit as reasonably incidental or economically necessary or appropriate to the operations of an integrated system the retention of any business, other than a public utility as such, which the Commission finds necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of the system."

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mining whether a business is retainable as *reasonably incidental or economically necessary or appropriate to the operations of an integrated utility system.*

The questions before us, therefore, are not merely, as respondents suggest: Is the retention of this business appropriate for the protection of investors? or, Is the retention of this business appropriate in the public interest? or, Is the retention of this business detrimental to the proper functioning of an integrated utility system? Rather, our fundamental inquiry is: Having in mind the protection of investors, the public interest and the proper functioning of an integrated utility system, is the retention of a particular non-utility business reasonably incidental or economically necessary or appropriate to the operations of a retainable utility system? The questions suggested by respondents are thus relevant in attempting to resolve the ultimate issue but they do not exhaust the scope of our inquiry.[5]

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[5] The legislative history of the Act sustains this conclusion. As the bill passed the Senate, Section 11 provided, with respect to "other businesses," that a holding company and its subsidiaries must divest themselves of any interest in or control over property or persons—

> "to the extent that the Commission finds necessary or appropriate to limit the operations of the holding-company system . . . to a single geographically and economically integrated public-utility system and such business as is reasonably incidental, or economically necessary or appropriate, to the operations of such system;
> "the Commission may permit as reasonably incidental or economically necessary or appropriate to the operations of such system the retention of an interest in any business (other than the business of a public-utility company as such) . . . if the Commission finds (1) that such business is affected with a public interest and its rates or charges are regulated by law, and that the retention of such interest in such business is not detrimental to the proper functioning of a single geographically and economically integrated public-utility system . . ."

The provisions empowering this Commission to include, among other businesses reasonably incidental or economically necessary or appropriate, those businesses affected with a public interest and regulated by law were changed in conference, where the genric language now in Section 11 (b) (1) was substituted for the more limited inclusive language in the Senate bill. The conclusion to be derived from this otherwise unexplained change is that we are permitted to include, among reasonably incidental or economically appropriate other businesses, enterprises other than those affected with a public interest and whose rates or charges are regulated by law. The mere fact that a business falls within this description, however, did not under the Senate bill, and more clearly does not under the Act as passed, render it *ipso facto* "reasonably incidental or economically necessary or appropriate" to the operations of an integrated utility system. In each case we must examine the character and operation of the specific business sought to be retained and its relationship to retainable utility operations and determine whether it is reasonably incidental or economically necessary or appropriate to the operation of the utility system to which it is sought to be appended.

1. *The Transportation Business.*

Turning to the businesses which are sought to be retained as reasonably incidental or economically necessary or appropriate to the operation of the Virginia electric system, we find that Virginia owns and operates street railway and bus facilities which serve the cities of Richmond, Petersburg, Norfolk and Portsmouth, and an interurban bus service between Richmond and Petersburg. The street car and bus facilities form a coordinated system in Richmond and Norfolk and the interurban system connects with the urban properties in Richmond and Petersburg. These four cities, having a combined population, including suburbs, of approximately 442,000 persons, are all within the company's electric service area in eastern Virginia. The railway property includes 132.38 miles of equivalent single track and 271 passenger street cars, and the bus property includes 330 busses which travel 225 miles of bus routes. During the year 1940, the street car system carried 41,612,429 revenue passengers, traveling 7,908,533 miles and the bus system carried 41,488,712 revenue passengers and operated over 11,744,377 miles. Of the combined 19,652,910 revenue miles thus operated, the bus system accounted for 59.8%. The railway system, with a plant account of $10,251,529, obtained gross operating revenues in 1940 of $2,447,109, but suffered a net operating deficit of $43,077. The bus properties, with a plant account of $3,309,431, obtained gross operating revenues in 1940 of $2,580,317 and net operating revenues (after depreciation) of $151,467. The 1940 net income from the combined transportation operations was $24,862, and the gross income was $106,493.

On behalf of the retainability of the transportation properties as reasonably incidental or economically necessary or appropriate to the operation of the electric system, the respondents urge several contentions. The long historical association of the two businesses, the joint use of per-

sonnel[6] and facilities[7] and the fact that the combined railway and bus operations return a net income are factors upon which respondents seek to rely in this connection.

But, in deciding whether the operation of an "other business" is reasonably incidental or economically necessary or appropriate to the operation of an integrated public utility system, these contentions are not persuasive. They are of no aid in distinguishing between a reasonably incidental or economically necessary or appropriate business and any other business. The existence on the one hand of a long historical association, or on the other hand of joint personnel and facilities or net returns is perfectly compatible with a combination whose components are not even remotely incidental, or economically necessary or appropriate, although owned and operated under common control. As we said in *The North American Company*, 12 S. E. C..... (1942), Holding Company Act Release No. 3405:

> "If it be recalled that the Commission may permit retention of an interest in a non-utility business as 'reasonably incidental, or economically necessary or appropriate' to the operations of an integrated public utility system or systems, when it finds retention of such interest to be 'necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning' of such a system or systems; and if it be recalled that the phrase 'public interest' is used in connection with the policy of curing evils which result 'when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties' (Section 1 (b) (4)), it becomes apparent that the histor-

[6] Only about 235 employees of the more than 3000 persons employed by the company are employed jointly in work for the transportation and electric systems.

[7] The two departments share space in certain office buildings and storehouses, office furniture and equipment, a heating plant, certain manholes, poles and rights of way, and some garages and trucks. Many of the poles are also used by an unaffiliated telephone company and for city fire alarm purposes on a rental basis.

ical background of the joint control of a non-utility business with a utility business has little or no bearing on the permissibility of its retention in a public utility holding company system. Interests held for a long period do not, by reason of that fact alone, achieve any relation to 'economy of management and operation' or 'the integration and coordination of related operating properties.' Indeed, it is the very purpose of Section 11 (b) (1), to require the severance of those interests acquired in the course of the historical 'growth and extension' of a holding company which do not satisfy the policy of the Act.

"By the same token, the 'substantiality and stability of income' afforded by non-utility interests is not, in and of itself, a factor warranting their retention in a public utility holding company system. Substantial and stable income might be afforded by businesses having no imaginable relationship to the economy of management and operation of integrated public utility systems. If the 'other business' clauses of Section 11 (b) (1) are not to be removed from their statutory context, and if we are to give full weight to the express standards and the policy of the Act, we cannot find that any business is 'reasonably incidental, or economically necessary or appropriate' to the operations of an integrated public utility system or is 'not detrimental to the proper functioning' of such a system merely because it is profitable.

"The same considerations apply to economies resulting from joint use of personnel. Unless the non-utility business is such that resulting economies are *economies in the operation of an integrated utility system or systems,* the mere showing of economies is of little weight in determining whether the non-utility business may be retained."

Another claim made by respondents in urging that the transportation properties are incidental to the operations

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of the electric system is that it would be difficult and costly to dispose of the properties in response to our order. But, again, as we said in *The North American Company:*

> "With respect to many of the non-utility properties involved in this proceeding, the claim has been made—apparently as an argument in favor of permitting retention—that great difficulty would be faced and losses would be sustained in disposing of such properties in compliance with a divestment order. The difficulty of disposing of an interest frequently results from the inability to find interested purchasers at a price which is equal to or more than the value at which such interest is carried on the books. Realistically, the sale of such properties does not always mean that a loss has been *sustained* at the time of the sale, but rather that it may have to be recognized at that time. Where it is clear that there is no market at any reasonable price and where disposition by any other method than sale is not feasible, a company which has been ordered to dispose of various interests may, under Section 11 (c), request an extension of time for compliance with divestment orders."

Respondents also contend that the transportation department is reasonably incidental or economically necessary or appropriate to the operations of the electric system because it furnishes free transportation to a portion of the employees of the electrical system, its vehicles carry advertising displays for the electric system without charge and it purchases a portion of the latter's generated energy.[8] While the furnishing of products or services which are useful in conducting the electric utility business is relevant to

[8] It should be noted that this policy by which the transportation department furnished free services to the electric department operated to impose upon the former expenses that properly should have been borne by the latter. Without deciding that the protection of transportation customers in circumstances such as these comes within the ambit of our duties under the Act, we note that this informal exchange of services between the electric and transportation departments, in the past entirely unaccounted for on the company's books, was not conducive to the proper functioning of Virginia's electric utility system.

a determination of the incidental character of the proposed other business, the weight to be attributed to these factors, of course, varies with their significance for the successful operation of the businesses concerned. The record in this case discloses that only a minute portion of the transportation system advertising is devoted to the requirements of the electric system. And a similarly insignificant portion of the transportation system's passengers consist of electric employees using free service. Unlike the St. Louis and Belleville Electric Railway Company, which was found in *The North American Company, supra,* to be reasonably incidental to the operations of The North American Company's retainable integrated public utility systems, Virginia's transportation properties are not devoted primarily to furthering the operations of its electric system. Rather, it is clear from the record, the railway and bus operations are devoted to independent ends and only accidentally and casually serve the interests of the electric system. The transportation department's purchases of electricity amount to less than 4 percent of the total sales of the electric department. And in its physical operations the transportation system is entirely unrelated to, and involves operating problems different from the electric business. As Virginia's Vice President, T. N. Jones, Jr., stated:

> "The problems are so different that it is better to have a man devote his time to the study of the transportation problems and let someone else devote his time to a study of the electric problems within the limits of the actual operations."

While respondents attempt to demonstrate that the separation of the transportation properties from the electric properties will increase the operating expenses of both, an examination of the record indicates that their claims inflate the quantity and character of the increase and fail to take into account numerous savings to be effected by the severance of the transportation system. We cannot find, for instance, that the termination of free transportation services

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for the electric employees will, as respondents contend, result in any significant added expense to the electric operations. In the first place, it is not at all clear that any added compensation to the electric employees will result from the termination of transportation privileges. In the second place, if additional compensation will, in fact, be necessary, this expense is properly an expense of the electric system, even when operated in conjunction with the transportation system, and will not, therefore, represent a completely new expense if the latter is operated independently.

Moreover, it must be noted that controlling weight cannot be given to the fact that severance of non-utility properties will result in increased expenditures to the remaining utility businesses. As a result of the haphazard growth and extension of holding company operations, the staffs of operating companies may well derive portions of their pay from their services to non-utility adjuncts. Separation of non-utility from utility operations may thus increase the expense to the utility system of maintaining this personnel. Although loss of valuable talent can almost always be prevented, in individual cases apparent hardship may result. But, these hardships are—in a great majority of cases—not inevitable, and only temporary. Joint use of personnel is common to practically all cases of joint control of utility and non-utility businesses. If we were to give controlling weight to the difficulties involved in reallocating staff and salaries in any given case, no reason would appear for not doing so in any other case—no matter how tenuous the relationship between the other business and the utility business.

Not only have respondents failed to show that the transportation business is reasonably incidental or economically necessary or appropriate to the operations of Virginia's electric system, but the record discloses that the coexistence of these properties under one ownership has been detrimental to the proper functioning of the electric system and adverse to the interests of consumers and investors. Thus, much of the railway property has been carried in the electric plant account. The effect of this practice on the rates of

the electric system has not been appropriate for the protection of the electric consumer. And the proper functioning of the electric system was impaired by an allocation of interdepartmental charges under which the transportation properties were charged considerably less than the over-all cost of the electric energy obtained from the electric system, and substantially less than the over-all cost for the use of the other facilities of the electric system. While respondents claim to have corrected exceptionable practices of this character, it is not clear that the changes completely eliminate the improprieties. On the other hand, it is certain that these practices will be ended by complete divestment of the transportation properties. Moreover, the difficulty and expense of properly allocating charges between the two dissimilar businesses and the advantages accompanying undivided attention by the company's executives to the electric operations, while not conclusive, are further considerations urging a severance of the transportation properties in the public interest and for the protection of investors and consumers.

In support of their contention that the Virginia transportation properties are retainable as an "other business," respondents have also argued, in effect, that if the transportation system were to be sold, there would be realized $5,112,000 less than its value to Virginia. It is not clear that the avoidance of this loss would fall within the character of economies the proof of which under the statute would support the retention of an "other business" with a utility system. In addition, however, we desire to point out the unconvincing character of the argument itself.

The figure of $5,112,000 is arrived at through the following process of reasoning. Respondents contend that no one would buy the transportation system except on the basis of converting it to an all-bus operation. The estimated market value of the transportation properties on an "all-bus" basis is $5,825,000, computed by multiplying by 6—*i. e.*, capitalizing at 16⅔%—the 1940 net operating revenues (before depreciation) of the transportation properties, amounting to $970,000. Conversion to "all-bus" opera-

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tions, they estimate, will cost $3,500,000, which must therefore be deducted from the market value of $5,825,000, leaving an estimated net proceeds of sale of $2,325,000. To this figure must be added an estimated tax saving of $778,000 (on the basis of tax rates in effect in 1941) which would accrue to Virginia for the year in which the alleged loss on such sale would be incurred, increasing the net to Virginia to $3,103,000. The present value of the transportation system to Virginia is alleged to be $8,215,000. Deducting from this sum the estimated net of $3,103,000 leaves $5,112,000, which, as indicated, is the sum by which the value of the property to Virginia is stated to exceed the amount realizable on its sale.

We must inquire, however, into the method by which the figure for the present value of the system to Virginia—$8,215,000—was arrived at. This figure is said to represent the present worth of the "net annual increment cash" which respondents claim will be realized by Virginia from the transportation system each year until the street railway franchise expires in August, 1956, plus the estimated present value ($970,000) of the anticipated proceeds of sale at that time. Respondents allege that the "net annual increment cash" will amount to $746,000, representing the sum of (1) the $106,000 transportation gross income (after depreciation) for 1940, (2) the $533,000 excess of the annual accrual for railway depreciation over the estimated $50,000 annual cash requirement for replacements, and (3) an amount equal to the claimed increase in cash expenses of the electric system if operated independently, less the federal income tax saving which would result from such increase in expenses. Respondents then proceed to reduce this "15-year annuity of $746,000" to its present worth by applying a discount rate of 6%, the assumed return thereon when invested in the electric utility operations.

We have indicated in the text our doubts with regard to one of the items entering into respondents' computation of the value of the transportation system to Virginia, namely, the claimed increase in the expenses of the electric system if operated independently. There is an even more serious

objection to respondents' method of computing the present worth of the "15-year annuity of $746,000," however. Even assuming that the "net annual increment cash" will yield a return of 6% when invested in the electric utility operation, there is no certainty that the amount of the net annual increment cash will continue at $746,000 throughout the 15-year period. The rate of return which will be realized upon the "net annual increment cash," *if it is actually received,* bears no relation to the discount rate which should be used in determining the present value of future annual increments. The discount rate applied should reflect the risks of non-receipt, and in our opinion a discount rate as low as 6% is not adequate under these circumstances.

Turning now to respondents' estimate of the realization from the sale of the transportation system, we have noted that although Virginia expected a realization equivalent to $8,215,000 from this property, respondents believe that no one else would pay more than $2,325,000 for it, representing its value if conversion to an all-bus operation is contemplated. As we have seen, however, $639,000 of the alleged $746,000 "net annual increment cash" would be just as available to a purchaser as to Virginia itself, and we are unable to accept respondents' assumption that a prospective purchaser would be unaware of its availability, and would not use it as the basis for determining the price he was willing to pay. We must, therefore, reject this contention of the respondents.

For all these reasons we cannot conclude that Virginia's transportation properties are either reasonably incidental or economically necessary or appropriate to the operation of its electrical system, and we will, accordingly, order that they be divested.

2. *The Ice Business.*

Virginia owns a small ice business in Williamsburg, Virginia. From the sale of ice produced in its operations the company in 1940 derived gross revenues of $9,619 and had expenses of $4,137, leaving a balance of $5,481. In

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prior years returns in similar amounts were realized from this business. The book value of the property used in the ice business, which is included in the electric utility plant account, is $14,775.

The ice plant, which has a capacity of 15 tons per day, is located in the company's electric service building in Williamsburg and functions primarily as an aid in the conduct of the electric utility business by affording for its building a cooling system in the summer and a heating system in the winter. The record sustains respondents' contention that the ice business is "subservient . . . and supplemental to the operation of . . . [the] . . . electric system and is a by-product of cooling and heating the company's electric service building . . ." Accordingly, we find that Virginia's ice business is reasonably incidental and economically appropriate to the operation of its electric system and may, therefore, be retained.

3. *The Merchandising and Jobbing Business.*

Virginia is engaged in the electric merchandising and jobbing business in connection with the promotion of the sales of electric energy in the territory served. It appears that these merchandising activities are not conducted for profit. Their function is to educate the public in the benefits that may be derived from the use of such appliances as have not yet found wide acceptance and to enlarge the company's electric load by increasing the use of electricity by residential customers. Gross revenues from the sale and rental of electric appliances have, according to respondents, declined from $422,733 in 1937 to $292,999 in 1940. Although the business operated at a net loss during those 4 years, the size of this loss has diminished considerably since 1937 so that, according to respondents' books, it was only $23,395 in 1940. However, if Virginia's latest proposed reallocation of interdepartmental expenses were applied in 1940, the loss would have been considerably greater.

Since the activities of the appliance sales operations are reasonably designed to, and do, educate the public in

the use of electricity, they are not unrelated to the business of operating an electric utility system. The discontinuance of an outside sales force in recent years and the termination of sales of those appliances with which, through persistent effort, the public is already familiar are further evidence that this business is conducted primarily for the benefit of the electric utility business, rather than as an independent adjunct. Serving the same purpose as ordinary sales promotion devices and implementing them in an effort to encourage greater consumption of electricity, these efforts, which the record discloses have tended to increase electric energy sales, may properly be considered incidental or economically necessary and appropriate activities entailed in operating the electric utility system. Virginia's electric appliance merchandising business is, therefore, retainable as reasonably incidental to the operations of the electric utility system.[9]

Virginia is also engaged in the gas appliance merchandising business in connection with its gas operations in Norfolk. This business is conducted with the same general purposes as the electric merchandising business. In 1940 gross revenues from the sale and rental of gas appliances were $66,977. For the first time since 1937 this business showed a profit—$3,732—in 1940. However, if interdepartmental expenses were more properly allocated, the 1940 figures for gas appliance operations would also have been red. Although the gas appliance merchandising business

[9] For some time prior to the enactment of the Public Utility Holding Company Act efforts were made on the part of independent appliance dealers to prohibit public utilities from engaging in the appliance business. According to one source, "between 1930 and 1937, in the legislatures of 23 states were presented bills designed to prohibit utility merchandising. In two of these, Kansas and Oklahoma, such bills were enacted into law. Kan., L. 1931, c. 238; Okla., Stat. §5301, as amended by S. 96, 1931 Sess. L., p. 188." (Thompson and Smith, Public Utility Economics (1941) 514; see also Nash, Economics of Public Utilities (1933) 470.) The Kansas statute was held unconstitutional by the Supreme Court of that state. (*Capital Gas & Electric Co.* v. *Boynton*, 137 Kan. 717, 22 P. (2d) 958 (1933); writ of certiorari dismissed on procedural grounds, *Boynton* v. *Hutchinson Gas Co.*, 292 U. S. 601 (1934).) A number of administrative and judicial proceedings were conducted in various states in connection with appliance merchandising by utilities. (Thompson and Smith, *supra;* Mosher and Crawford, Public Utility Regulation (1933) 141.) In legislating on the scope of activity permitted to holding company systems, however, Congress did not deal specifically with this question, and the language of the statute leads to the conclusion we have reached here.

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is reasonably incidental or economically necessary or appropriate to the operations of Virginia's gas system, it is not so related to the company's electric system. Since, as we shall see, the gas system must be severed from common control with the electric system, Engineers must also divest itself of this business.

B. *Additional Systems Sought to be Retained by Engineers Along with Virginia's Electric System.*

1. *Virginia Gas System.*

Engineers seeks to retain Virginia's gas utility system along with Virginia's electric system. The gas system consists of a gas manufacturing plant located in Norfolk and a distribution system which serves an area of approximately 35 square miles in the city of Norfolk, Virginia, and its suburbs. As of July 1, 1941, the system furnished gas to 29,363 customers of a total of about 157,000 persons residing in the area served. It is the second largest gas system in the state serving retail consumers. Its distribution facilities on December 31, 1940 included 207.6 miles of high pressure and 149.5 miles of low pressure mains, and its manufacturing plant had a capacity of 8,500,000 cubic feet per day (but was restricted to an actual capacity of about 75% of that amount by the limitations of the piping system from plant to holders). During the year 1940, the plant produced about 1,161,800,000 cubic feet of gas and the system's total sales were 1,011,427,000 cubic feet. The book value of the gas utility plant, as of December 31, 1940, amounted to $6,051,309, including admitted net write-ups of $1,562,611. Its gross operating revenues in 1940 were, according to respondents, $1,054,987, its net income was $120,892 and its gross income was $270,370.[10] We find Virginia's gas system to be an integrated public utility system within the meaning of Section 2 (a) (29) (B) of the Public Utility Holding Company Act.

[10] This figure is based on Virginia's proposed method of allocating interdepartmental expenses.

Since the principal system here involved is an electric utility system, under our prior decisions the gas properties cannot be part of the single integrated public utility system. *United Gas Improvement Company,* 9 S. E. C. ..... (1941), Holding Company Act Release No. 2692, *Columbia Gas & Electric Company,* 8 S. E. C. 443 (1941), and *The North American Company, supra,* page 9. Therefore, in determining whether, as respondents contend, this system is retainable in the Engineers holding company system we must consider whether it conforms to the requirements of Section 11 (b) (1) with respect to additional integrated public utility systems.

Section 11 (b) (1) permits the retention by a holding company of one or more additional integrated public utility systems such as Virginia's gas system if we find that:

> (A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;
>
> (B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and
>
> (C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

Since the electric and gas systems are located in the same state, the combination is not repugnant to the standards of Clause (B) of Section 11 (b) (1).

Moreover, the gas system, serving only the city of Norfolk and its suburbs (an area of approximately 35 square miles), lies entirely within a small portion of the electric service area (which, in all, contains 13,500 square miles).

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Norfolk is a highly industrialized city with a population of about 144,000. Retention of the gas, along with the electric, system would result in the combination of a $6,051,309 gas plant account (including write-ups of more than $1,500,000) with a $68,007,540 electric utility plant account, increasing the latter figure by 8.9 percent, and the combination of about $1,055,000 of gross gas operating revenues (based on 1940 figures) with about $14,910,000 of gross electric operating revenues (also based on 1940 figures), increasing the latter figure by 7.1 percent. Both the gas system and the electric system are subject to regulation by the Virginia State Corporation Commission, which has authority to fix rates and regulate the issuance of securities and the keeping of accounts. We do not regard this as a prohibitively large combination. On the record before us, therefore, we find that the combination of Virginia's gas and electric system is not so large, in view of the state of the art and the area affected, as to impair the advantages of localized management, efficient operation or the effectiveness of regulation.

There remains, however, for our consideration the question of the conformity of this combination to the standards of Clause (A) of Section 11 (b) (1). Under Clause (A), an additional integrated public utility system can be retained only if it is demonstrated that it cannot be operated independently of its present holding company parent without the loss of substantial economies which can be secured by the retention of control by its present holding company. Respondents assert that substantial economies in the operation of both the gas and electric systems will be lost if common control of these properties is terminated. The economies are said to amount to $71,500 in the operation of the gas system and $56,000 in the operation of the electric system. We need not at present decide between the contention of the Public Utilities Division that the "loss of substantial economies" in the (A) standard refers exclusively to economies lost to the additional system, and the contrary contention of the respondents that the clause refers to economies lost to both the principal system and the additional system. Assuming, *arguendo,* that the latter inter-

pretation is correct, we cannot find a loss of substantial economies.

The economies claimed stem largely from savings in the form of salaries which, on separation, would either be paid to allegedly necessary additional personnel or, instead of being shared, as at present, would be borne by one system or the other. In prescribing the conditions under which additional systems may be retained, however, Congress did not speak in terms of increased *expenses*. It authorized the retention of additional systems if they could not be operated independently without the loss of substantial *economies*. And in measuring the loss of *economies* accompanying the severance of a combination of two utility systems it is particularly important to consider the beneficial effects of independent ownership upon the efficient operation of each system. A consideration of increased expenditures alone does not adequately reflect the impact of severance upon the two systems. Where, as here, gas and electric operations are conducted in the same territory and in many ways compete with each other, the danger exists that under a single management one business may be suppressed in favor of the other[11] or that one will bear burdens properly allocable to the other. The record before us shows, for instance, that there have been abuses in allocating expenses between gas and electric properties. Not only has there been a failure to allocate or separate the expenses

[11] Thus, in testifying with respect to the Gulf gas and electric combination, H. V. Faber, treasurer of Gulf, when asked why the need for separate service buildings for independent gas and electric systems could not be obviated by the gas system's renting a portion of the service building now used jointly, replied:

If I had anything to do with it I don't believe you would keep it there.

Q. That is because you wouldn't want your competitor in the same building.

A. That is because if two interests get together, why, I don't believe they get along very well. We have a common interest now and it would be separate interests under this proposed gas company being a separate company. There wouldn't be anything in common.

Q. Would you say that if the gas department were independent that they would have conflicting interests with the electric operations?

A. I think the gas, another gas company would try to do its best job, and they may want to do things differently than they are being done now.

Q. You wouldn't say that the interests of a gas utility and an electric utility though would run cross current, would you?

A. I believe they would if they were separate.

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of many specific items[12] but there has been an over-all erroneous allocation. Thus, prior to 1933, expenses were allocated between Virginia's departments in the ratio which the gross revenues from each bore to the total. After that year they were allocated on a net revenue basis, the prior year's revenues furnishing the annual yardstick for the current year's allocation. The effect of this change was to increase the expenses allocable to the electric department and to decrease the expenses allocable to the gas department. Neither method of allocation bore any relationship to the actual expenses involved. With the commencement of this proceeding still other allocations have been suggested by the respondents. The impropriety of the prior allocations, however, as the respondents admit, has in the past affected the rate structures of the gas and electric operations. It is true that respondents propose to attempt to correct these practices. But that these abuses can most effectively be eliminated by complete severance is unquestionable. Moreover, the possible benefits of unsuppressed development and growth for each business must also be cast in the balance when substantial economies are measured. The economies which may be expected from a personnel single-mindedly devoted to the operation of either a gas or electric business, although not predictable in precise mathematical terms, cannot be ignored.

Turning to an examination of respondents' claims as to increased expenditures, we find that while the figures claimed for the gas operations would, if accurate and in the absence of any benefits resulting from separation, afford an impressive basis for finding a loss of substantial economies to that system,[13] the record discloses that the increased expendi-

[12] *E. g.*, the failure to segregate retirement reserve among departments, the failure to charge the gas system proper rentals for building space used by it but owned by the electric department.

[13] But *cf.* the language of Senator Wheeler in interpreting the Conference Committee's action with respect to Clause (A):

> "After considerable discussion the Senate conferees concluded that the furthest concession they could make would be to permit the Commission to allow a holding company to control more than one integrated system if the additional systems were in the same region as the principal system *and were so small that they were incapable of independent economical operation . . .*" 79 Cong. Rec. (1935) 14479. (Emphasis supplied.)

tures envisaged by respondents in the event of independent operation are excessive. In estimating the personnel requirements of the independent gas system, respondents are, to say the least, liberal in their proposals. The evidence indicates not only that a disproportionately large number of employees is contemplated for the new enterprise but that the expenses assumed to attend its operation, are extraordinary. For instance, the evidence introduced in these proceedings requires a significant reduction of respondents' estimate that independent operations will require 19 additional employees for conducting the "customers' accounting and collection" work. Nor does the record sustain a claimed cost of performing billing and accounting operations for the independent gas company alone which is almost identical with the present cost of these operations for combined gas and electric customers.

With respect to other operations also, exaggerations appear in respondents' claims. Serious questions are raised, for instance, by the asserted increase in advertising and sales promotion expenses. Not only is there doubt as to the need of at least one of the proposed additional employees but the calculated expense of advertising for an independent gas company is not sustained by the testimony. To be considered in this connection is the fact that the increased expenditures in this type of work will diminish as the independent company becomes firmly established in the public mind as a separate enterprise. Although even respondents' witnesses admit the temporary character of increases in this department, no appropriate adjustment is made in respondents' claims of lost economies.

Another area in which the record contains inadequate support for respondents' contentions is that dealing with the proposed increase in the expenses of executive personnel. The record discloses that the present executives of Virginia devote no more than 6 per cent of their time to the problems of the gas operations. Respondents estimate an increase of $11,500 in salaries of general officers and executives who will be needed if the gas properties are to be operated independently. Presumably, the additional assist-

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ance will be competent. To regard sums spent on competent personnel, who will give their individual attention and full energies to the problems of the gas system, as a flat increase in expense presupposes that the services thus rendered will be worth no more than 6 per cent of the time of Virginia's present executives. With the highest regard for the abilities and diligence of Virginia's officers, this assumption can, nevertheless, not be indulged. Indeed, a curious light is thrown on the character of the executive supervision of the gas operations—both at present and in the proposed future combination of the gas and electric systems—by respondents' statement that the estimated quantity and expense of additional executive assistance required for the proposed combination of Virginia and Savannah, will not be materially reduced if Virginia's gas system is severed from the combination.

We conclude that, with respect to the gas properties alone, the record, if given its most liberal interpretation, would not sustain a finding of more than one-half the claimed increased *expenses*.[14] We further conclude that the loss of economies would in fact be less than such increased expenses.[15]

The statutory scheme contemplates that a holding company will be confined to the operation of a single integrated public utility system and in exceptional cases to certain additional integrated utility systems. And Congress required that the circumstances under which so exceptional a combination can be permitted must depend, among other things, upon a showing that substantial economies would

[14] This reduction in the claimed increased expenses would result in an increase of 4.6% in the 1940 gas operating expenses and a decrease of 13.3% in gross gas income for 1940 and 29.8% in the 1940 gas income available for dividends. These figures, of course, do not in any way reflect any income tax savings to the gas system.

[15] In this connection, we note further that there are certain expenses of the combination—such as the cost of continuously and properly allocating expenses—and certain savings to the electric system from severance—such as the full-time use (in view of the expansion of electric operations) of the employees and facilities formerly used in part by the gas department—which must also be considered in evaluating respondents' claims. Of course, too, to the extent that present joint electric-gas facilities can be used by relatively more profitable electric operations after the gas department is severed, any loss which the electric system may suffer through an order of divestiture will be reduced.

be lost in the break-up of such a combination. Since this requirement is an exception to a clearly expressed general policy, it must be strictly construed.[16] Moreover, in determining what are substantial economies, we must bear in mind that Congress was informed that some loss of economies of the sort principally involved in this situation—in joint administrative, clerical and supervisory services and the use of joint facilities—almost inevitably would accompany separation of jointly controlled utility systems.[17] Against this background we must require clear and convincing evidence of a loss of economies which would seriously impair the effective operations of the systems involved in order to permit the retention of an additional system.

The record before us does not indicate that a loss of substantial economies will attend the severance of the gas properties from common control with the electric system. Accordingly, the requirements of clause (A) of Section 11(b)(1) do not permit the retention of the former as a system additional to the latter.

2. *Savannah Electric and Power Company*

(a) Requirements of Clause (A) of Section 11(b)(1).

The Savannah Electric and Power Company (hereinafter referred to as Savannah) is a subsidiary of Engineers. The continued control of its properties along with Virginia's electric system is also sought by respondents. This company, in addition to operating an electric utility system, is engaged in the electric merchandising and jobbing business and the street railway and bus businesses. Its plant account as of December 31, 1940 and its operating revenues, net operating revenues, gross income and net income for

[16] *Cf. Spokane & Inland Empire Railroad Co.* v. *U. S.*, 241 U. S. 344 (1916); *Securities and Exchange Commission* v. *Sunbeam Gold Mines Co., et al.*, 95 F. (2d) 699, 701 (C. C. A. 9, 1938).

[17] Hearings before Committee on Interstate and Foreign Commerce on H.R. 5423, 74th Congress, 1st Session (1935), Part 2, pp. 1249, 1402-3, 1530-31, Part 3, pp. 2257-2277.

Hearings before Committee on Interstate Commerce on S. 1725, 74th Congress, 1st Session (1935) p. 65.

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each of the departments for the year ended that date were as follows:

	Plant Account	Operating Revenues	Net Operating Revenues[a]	Gross Income[a]	Net Income[a]
Electric	$12,932,358	$2,081,550	$826,626	$826,733	$507,410
Street Railway	1,939,887	52,265	107,945*	107,957*	163,427*
Bus	304,843	338,184			
Total	$15,177,088	$2,471,999	$720,681	$718,776	$343,983[b]

* Indicated deficit.

[a] Based on Savannah's proposed method of allocating interdepartmental expenses.

[b] Not including a $4,265 deficit from appliance merchandising.

Savannah's electric utility system serves the city of Savannah, Georgia, and a surrounding area, having a total population of approximately 120,000. Savannah itself has a population of about 96,000 and is the second largest city in the state. Of the system's 24,857 customers on March 31, 1941, 20,839 (84%) were within a 3.8 mile radius of the company's general office at Savannah, and 23,917 (96%) were within a 15-mile radius; the remainder of the population served is within a radius of approximately 45 miles. The system is surrounded by thinly populated territory and broad marsh lands and is almost entirely isolated, although an interconnection with Georgia Power Company, a non-affiliated company operating west of Savannah's territory, is under construction.

The electric system has a generating capacity of 35,500 kw, limited by boiler capacity to 31,200 kw. It is centered in one steam plant, is completely interconnected and includes 644 pole miles of transmission and distribution lines and 13 miles of underground conduits. During 1940, the energy generated totalled 96,326,000 kwh and sales amounted to 83,295,000 kwh.

We find that Savannah's electric utility system is an integrated public utility system within the meaning of Section 2(a)(29(A) of the Public Utility Holding Company Act of 1935.

Since we have found that the combination of Virginia and Savannah is not repugnant to the standards of Clause (B) of Section 11(b)(1)[18] there now remain for our con-

[18] *Engineers Public Service Company, et al., supra,* N. 3.

sideration the questions of its conformity to the standards of Clauses (A) and (C) of that section. As we have pointed out, under Clause (A) an additional integrated public utility system can be retained only if it is demonstrated that it cannot be operated independently of the principal system without the loss of substantial economies which can be secured by the retention of control in combination with the principal system. Respondents assert that substantial economies in the operation of Virginia and Savannah can be secured if common control of these companies by Engineers is permitted. Again, we assume, without deciding, that the lost economies whose substantiality is in question may include economies to both the principal and the additional systems. According to respondents' calculation of the economies, $28,000 will be lost by each company in the event of severance.

It will again be noted that this amount represents increased expense, which, as we indicated above, is not necessarily equivalent to lost economies, and which does not take into consideration any improvements in service or efficiency or other benefits that may result from severance. The economies thus asserted as substantial amount to a saving of $56,000 annually in the combined operations of these two enterprises. They are computed on the premise that the present service company, Engineers Public Service Company, Inc., will be unable to continue to render its services for a system as small as the largest possible combination of the Virginia and Savannah properties. Accordingly, respondents assert that the services now rendered by the service company must be separately provided for Virginia and for Savannah, either by additional expert personnel or by separate service arrangements with an independent service company. It is estimated that the cost of these services to the operating companies if they remain under common control would be $56,000 less per annum than it would be if they were operated independently. The services thus asserted as necessary are not of the kind that involve the physical, day-to-day operations of the utility properties.

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Rather they consist in such activities as advice with respect to taxes, insurance procurement, accounting consultation, assistance in planning and executing financing operations, and public relations. And even in these fields they encompass, for the most part, supervisory and consultative work rather than preparation of reports or studies or accounts in the first instance. In short, they are of a general character which might inhere in the operation of any two similar and related, but not jointly operated, businesses.

In considering the Public Utility Holding Company Act of 1935 Congress was informed that economies of this type attended holding company control and that increased expenses of this character might attend the severance of operating companies from holding company systems.[19] The Congress, nevertheless, provided that a holding company was to be limited in its operations to a single integrated public utility system, and only in certain exceptional cases did it authorize the retention of more than one integrated public utility system under common control. One of the conditions defining these limited cases was the achievement of substantial economies by combination. This statutory requirement of "substantial economies" (which, as we have pointed out, is contained in an exception to a general policy and must, therefore, be strictly construed against those claiming its benefits)[20] must be tested in the light of Congressional knowledge that in the normal course of events certain economies, particularly of the sort here involved, could be obtained by common control. At least a proportionately larger saving, and one of considerable significance in successfully conducting the utility businesses involved, must be shown in any given case in order to permit the retention of the properties under the standards of Clause (A). The legislative history of this statute further emphasizes the size and scope required of the losses attending separation in order that the necessary loss of "sub-

[19] *Supra*, p. 21, N. 17.
[20] *Supra*, p. 21, N. 16.

stantial economies" be found. (*Cf. The North American Company, supra*, p. 9.)[21]

We cannot find that the standards of Clause (A) permit the retention of Savannah under common control with Virginia. Accepting respondents' figures as both quantitatively accurate and qualitatively appropriate, we are presented with an increase in expenses of $28,000 annually for each company. This represents a .3% increase in Virginia's 1940 electric operating expenses and a 2.2% increase in Savannah's 1940 electric operating expenses.[22] It represents .5% of Virginia's gross, and .7% of its net income from electric operations in 1940 and 3.4% of Savannah's gross and 5.5% of its net income from electric operations in 1940.[23] When the background and meaning of the Congressional requirement of "substantial economies" is examined and the potentialities of a staff devoted solely to the problems of efficiently conducting one electric system are considered, this showing does not permit the retention of Savannah under the standards of Clause (A), even if respondents' figures are accepted.

But the figures must be approached somewhat critically. In the first place, we note that they include economies in the operation of the transportation properties which, as we shall see,[24] are not retainable in any event. Accordingly, the savings are immediately not as great as claimed. Moreover, respondents arrive at the claimed "substantial economies" by comparing two entirely hypothetical costs—the estimated costs for providing services for the two companies when combined under common control and the estimated cost for providing services for the two companies

[21] Evidence of Congressional intent, and knowledge of the problem, in using the word "substantial", is disclosed in the statement of the Senate Committee on Interstate Commerce, (Senate Report No. 621, 74th Congress, 1st Session (1935), p. 9) made in discussing the requirements of the bill in respect of arrangements with service companies: "The requirement that mutual service companies must perform their contracts for member companies at a *substantial saving* to member companies has been relaxed so as to require *only a reasonable saving.*" (Emphasis supplied.)

[22] These figures are based on Savannah's proposed method of allocating interdepartmental expense.

[23] *Idem.*

[24] P. 28, *infra.*

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when independently managed. The uncertain nature of evidence of this character requires care in the examination of the asserted claim and circumspection in the reliance on the offered proof. The accuracy, for instance, with which respondents have gauged the number and expense of additional experts is shaken by their statement that no material change will be required in the scope and expense of this assistance, even if Virginia's transportation and gas properties and Savannah's transportation properties are not included in the anticipated combination.

Moreover, we believe that the loss of economies which Engineers claims will accompany independent operation is not borne out by the record. These economies, as we have noted, are predicated on savings in obtaining supervisory services which it is contended are necessary in the operation of the two companies. It is anticipated that the addition of expert executives to Virginia's staff who can also render appropriate services to Savannah will more economically afford the necessary assistance than will the employment of a service company. But many of the functions which it is proposed that the supervisory experts will perform could be efficiently performed by members of the present executive staffs of each operating company. And the fact that Engineers continuously sees fit to recruit its supervisory experts from the ranks of the operating company executives reflects a capacity in these men for that purpose. That these services have not been performed by the operating personnel in the past is at least partially attributable to the historical policy of the holding company system which denied them the opportunity to fully exercise their abilities in these matters. Respondents have not demonstrated that an independent local management requires such thoroughgoing or expensive assistance of additional experts as is contended.

The record does not convince us that the price of independence and the economies of common control are substantial. We, therefore, cannot find that the separation of Savannah from Engineers' system will result in the loss of substantial economies within the meaning of Clause (A).

(b) Requirements of Clause (C) of Section 11 (b) (1).

Clauses (A), (B) and (C) of Section 11 (b) (1), establishing the requirements for the retention of a public utility system in addition to a principal system, are set forth in the statute in the conjunctive. To permit a holding company to control more than one system we must find that the standards of all three clauses are met by the proposed combination. Compliance with one or two will not suffice. Savannah has failed to meet the standards of Clause (A), and on that ground alone its retention by Engineers as a system additional to Virginia is precluded. While, therefore, our decision with respect to Clause (A) renders unnecessary any determination with respect to Clause (C), we feel that in a proceeding of this character a resolution of this latter question will not be inappropriate.

Under Clause (C) an additional integrated utility system can be retained by a holding company only if

> "The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area of region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation."

Respondents have suggested that, since Clause (B) establishes geographical conditions which must be met in order to permit common control of more than one integrated public utility system, Clause (C), requiring that a combination be "not so large" as to impair certain specified advantages, cannot be, and is not, addressed to geographical conditions. This argument misapprehends the character of the (A), (B), and (C) clauses in Section 11 (b) (1). While these clauses impose separate conditions, these conditions do not set up mutually exclusive types of standards. The fact that Clause (B) is concerned with certain geographical considerations does not mean that all geographical factors are excluded from the scope of the other two clauses. And, in fact, the words, "not so *large* (considering the . . . *area*

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or *region* affected) . . .", indicate the existence of geographical considerations to be taken into account in applying the standards of Clause (C). The relevance of such considerations in the sensible application of the clause is manifest. The clause is concerned with the effect of the size of a *combination* of integrated public utility systems on the advantages of localized management, efficient operation, and effectiveness of regulation. The magnitude of the distances and differences between the service areas of the components of the combination clearly has some bearing upon the possibility of obtaining for the combination the advantages of localized management, efficiency of operations and effectiveness of regulation. It is almost too obvious to need explicit statement that, other things being equal, the advantages of localized management, for example, are less likely of achievement in a combination whose properties are separated by 450 miles than in a combination of adjacent properties.[25]

The legislative history of the Act bears out the plain meaning of its language. The Senate Committee Report points out that one of the purposes of the legislation is

> "to confine the operations and the interest of each public utility system to the actual utility business of a given region so that the system will have to work out a *modus vivendi* with the population of that region. . . . A far-flung disjointed system is independent and absentee so far as any particular community in its system is concerned. Its management has the problems of no one community for its exclusive consideration. It derives a great portion of its power and its profits from outside sources over which the community has no control. It can never be successfully regulated by the community it serves. . . . An operating system whose management is confined in its interest, its energies and its profits to

[25] Of course, the fact that geographical factors must be considered in determining whether a combination is too large does not mean that an examination of the size of the physical properties, plant account, revenues or income is not also apposite in treating the requirements of Clause (C).

> the needs, the problems, and the service of one regional community is likely to serve that community better, to confine itself to the operating business, to be amenable to local regulations, to be attuned and responsible to the fair demands of the public. . . .''[26]

Clearly Congress contemplated that geographical restrictions in Clause (C) determined on the basis of the ''area'' or ''region'', and supplementing the automatic limitations of Clause (B) which are based on state boundaries, might be necessary to effectuate the purposes of the Act.

If the retention of Savannah is permitted, Engineers proposes to establish its headquarters in Richmond and to operate the two companies from that city. The electric systems of Virginia and Savannah are approximately 315 miles apart at the closest point and approximately 525 miles apart at the farthest point. Their executive offices are separated by 443 miles. Savannah serves only the city of Savannah and its suburbs. Its service area is surrounded by marshy, uninhabited territory. Virginia serves eastern Virginia and northeastern North Carolina. No operating relationship exists between the two companies. The industrial and agricultural life of Virginia's service area has little economic relationship with that of Savannah's service area. In fact, as one of respondents' witnesses indicated, between the areas served by Virginia and Savannah there is little, if anything, in common which would not be common to any two different economic, geographical and political areas of the South. Under these circumstances it does not appear that an arrangement by which the chief executives would still only occasionally visit the properties in Savannah or the region in which they operate[27] would keep these additional systems ''under localized management with a principal integrated system''[28] or would avoid

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[26] Senate Report No. 621, 74th Congress, 1st Session (1935), pp. 11-12.

[27] Respondents in their brief admit that "the only change that will be made in management in effecting the combination of the Virginia and Savannah companies will be the transfer of certain executives and experts from New York to Richmond."

[28] H. P. Report, No. 1903, 74th Congress, 1st Session (1935), p. 71.

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the evil that arises when the growth and extension of a holding company "bears no relation to . . . the integration and coordination of related operating properties."[29] An awareness of, and a sensitivity to the problems of the population of Savannah are not likely to be engendered in a management which resides and works in Richmond.[30] Accordingly, we cannot find that the combination is not so large as to impair the advantages of localized management.

The record before us will, therefore, not sustain a finding that the combination of Virginia and Savannah meets the requirements of Clause (C) of Section 11 (b) (1).

In view of the fact that Savannah, under the standards of Clauses (A) and (C) of Section 11 (b) (1), cannot be retained by Engineers as an integrated public utility system in addition to Virginia's electric system, we will order Engineers to divest itself of Savannah. We doubt whether, under the circumstances of this case, it is necessary for us to decide which of Savannah's other businesses are reasonably incidental or economically necessary or appropriate to the operation of its electric system. However, since respondents have so requested, since the record is before us, and since the task is relatively simple,[31] we deem it appropriate to set forth our views upon the retainability of Savannah's other businesses.

As we have already pointed out, Savannah, in addition to engaging in the electric utility business, operates a transportation system. Although originally this enterprise was entirely a railway system, the company has gradually shifted to bus operations so that today it operates 10 bus lines with a total route mileage of about 42 miles and only 3 railway lines with a total equivalent single track mileage of about 17.5 miles. Over these routes service is furnished

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[29] Holding Company Act, Section 1 (b) (4).

[30] "It may be observed that Section 11 (b) in both the Senate bill and the House amendment contemplates the reestablishment of the advantages of localized management in the operating utility industry and the consequently necessary breakdown of the control of large holding companies over geographically scattered operating utility companies." *Op. cit. supra*, n. 28, at p. 70.

[31] See *supra*, p. 4, n. 3.

by 17 passenger and 7 service street cars and 49 busses. Of the approximately 2,300,000 revenue miles travelled by the combined bus and railway facilities, about 81% were covered by busses. The railway properties—both tracks and rolling stock—are old and in constant need of expensive repairs. Indeed, in view of the condition of these properties the immediate discontinuance of railway service and the substitution of busses has been recommended to and considered by Savannah's officers.

As of December 31, 1940 the book value of Savannah's transportation investment was $2,244,730 as compared with a book value of its electric utility investment of $14,718,632. In 1940, the electric system's gross revenues were $2,081,550 and the transportation system's gross revenues were $390,449. Electric net income for that year amounted to $826,733, as compared with a transportation operating deficit of $107,958.

The equipment used jointly by the two departments consists largely of poles[32] from which both trolley and electric wires are suspended. Joint use is also made of automobiles and trucks, certain garage and automotive repair facilities and a general office building. Of the company's 381 employees, 126 perform work for both departments, but the majority of these are engaged in clerical, repair and administrative, rather than operational, work.

The 1,818,700 kwh. of D. C. electric energy[33] which the electric system supplied to the transportation properties in 1940, was charged on the company's books to the latter at $7,233, but an admittedly fairer allocation would increase this charge to $23,844. In addition, certain miscellaneous A. C. electric energy, charged on the books to the transportation department at $1,039 but more properly chargeable at $4,970, was supplied by the electric department. On its side the transportation system furnished certain electric employees with free transportation.

[32] To many of these poles are attached the wires of an unaffiliated telephone company and the city's fire alarm system. The company charges a rental for this use of the poles.

[33] The equipment for converting the company's A. C. power into this D. C. power, although used only for railway purposes, is carried in the electric property account.

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Respondents contend that the severance of the transportation properties will require the absorption by the electric system of expenses in the amount of $50,851 annually. These expenses, which are now borne by the transportation properties, relate to the joint use of facilities and employees.

As respondents admit, there is little operational relationship between the two departments; and when motor busses are substituted for trolleys there will be none. As one of respondents' witnesses pointed out in discussing the fact that entirely separate storage facilities are maintained by the two departments:

> "If the storerooms were combined we would not achieve any economy. The materials are entirely different. They cannot be put together. The men in the storerooms who handle the materials would have to be there in the same number as they are at the present time. We would have no economy from combining the two storerooms.
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> The functions of the two departments are entirely separate. The men who operate the departments are separate; regardless of whether you have them in the same building or in widely separated buildings. . . . I think they could just as efficiently operate in one building or in widely separate buildings; each department would still perform its own function."

The record shows that the same conception is equally applicable to the entire operational relationship of the two departments.

We are thus asked to permit the retention, as reasonably incidental or economically necessary or appropriate to the operation of a utility business, of a property which is not related operationally to the utility, which is operating at a loss and whose retention in the past has resulted in serious misallocations of expenses and questionable

entries in property accounts.[34] The long historical association of the two departments, the sharing of personnel and equipment, claimed losses attending severance, the fact that free transportation is afforded to employees of the electric department and that the transportation department consumes electric energy produced by the former are urged in favor of permitting this combination. Since the losses attending severance are somewhat exaggerated, since the transportation department's consumption of electricity, at best not substantial, is, according to the recommendations of the company's officers, to be virtually eliminated by conversion to bus operations, and since the number of electric employees furnished free transportation is of small consequence in the essentially independent operation of the transportation department, respondents' only relevant arguments fall. We find that the retention of an operationally unrelated business, which is losing money and which must deprive the electric business of some of the services of joint executives, is detrimental to the proper functioning of the electric system and not in the public interest or appropriate for the protection of investors or consumers. *A fortiori* we cannot find that the retention of this business is reasonably incidental or economically necessary or appropriate to the operation of Savannah's electric utility system.[35]

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[34] See N. 33.

[35] As in the case of the Virginia transportation system, respondents have also argued, in effect, that the value of the transportation system to Savannah itself exceeds the amount which could be realized upon any sale of such system. We have indicated above (pp. 12-3) our doubts as to the relevance of such a contention to the question of the retainability of an "other business". Moreover, here too we do not consider the argument itself convincing. In view of the $3,322 net operating deficit of the Savannah transportation system even after conversion to an all-bus operation (estimated on the basis of 1940 operations), respondents claim that Savannah cannot hope to obtain for its transportation properties in the present market more than their salvage value of $212,000, as compared with their "present value" of $513,271 to Savannah itself. The latter figure is arrived at by capitalizing at the rate of 7% the "net increment cash" of $35,929 a year which it is claimed Savannah will realize from its transportation system, computed by deducting from the $50,851 alleged increased cost of operating the electric system independently of the transportation system (1) the $11,600 saving in federal and state income taxes which such increased cost would produce, and (2) the $3,322 net operating revenue deficit of the transportation system.

If, as respondents assume, the "annual net increment cash" will produce a return of 7% when invested in the electric utility business, presumably the

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In connection with its electric business, Savannah is engaged in the merchandising of electric appliances. As part of its general sales promotion activities, the company seeks to increase the use of electric energy by promoting the sale of those appliances which do not enjoy satisfactory customer acceptance in its electric service area. Its policy in this business is to reduce its efforts with respect to those appliances in which customer acceptance is being independently developed.

The gross revenues from the sale of appliances during 1940 were $161,222. Although on the company's books the appliance business showed a net return of $11,598, a more proper allocation of interdepartmental expenses would result in a deficit of $4,265. Nevertheless, there is evidence to indicate that the sale of these appliances has contributed to the growth of the electric load.

On the record before us, and for the reasons stated in connection with Virginia's electric appliance business, we find that Savannah's electric appliance business, which is operated in a similar fashion, is reasonably incidental to the operations of the Savannah electric system.[36]

$212,000 of salvage on the transportation properties would yield a like return, or $14,840 per year. So on respondents' own figures the net annual loss resulting from severance of the transportation properties would be only $21,089 (i.e. $35,929 less $14,840). As we indicate in the text, we believe the alleged increased costs of operation attending severance are somewhat exaggerated. Furthermore, the $50,851 estimate of increased costs include approximately $30,000 of pension expense for transportation employees. The $513,271 "present value" to Virginia assumes that the $30,000 pension expense is a permanent continuing annual expense that Virginia will have even if the transportation property is sold. Obviously if this property is sold the pension expense to Virginia will not continue indefinitely at the present level. To the extent that it ultimately declines the $21,089 annual loss to Virginia resulting from severance of the transportation properties will be diminished. Finally, respondents' estimates make no allowance for possible substantial tax savings which might accrue to Savannah as a result of the realization of a "tax loss" on the transportation properties in the year in which they are sold.

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[36] The evidence in this record will not, of course, sustain a finding that Savannah's non-utility businesses are reasonably incidental or economically necessary or appropriate to the operation of Virginia's electric utility system. Accordingly, since Savannah's electric system must be severed from common control with Virginia, these businesses will also have to be eliminated from Engineers' holding company system.

C. *Conclusion.*

Engineers must divest itself or cause the divestment of all interests, direct and indirect, in Savannah and the gas utility system, the gas appliance business, and the transportation properties of Virginia. Moreover, of course, if Virginia is to be Engineers' principal system, Engineers must divest itself of all interest, direct and indirect, in Gulf and the Louisiana, Texas, New Mexico and Mexico properties.

II. The Limitations on the Operations of the Engineers Holding Company System if the Electric Utility System of Gulf States Utilities Company Is Its Single Integrated Public Utility System.

We now turn to a consideration of the permissible scope of the operations of the Engineers holding company system on the assumption that the electric utility system of Gulf is its principal system. In that event, of course, neither Virginia nor Savannah may be retained by Engineers.

Gulf is engaged in the electric and gas utility businesses and also operates steam, water, and ice enterprises and an appliance merchandising business. Its plant account as of December 31, 1940, and its operating revenues, net operating revenues, gross income and net income for the year ended that date were as follows:

	Plant Account	Operating Revenues	Net Operating Revenues[a]	Gross Income[a]	Net Income[a]
Electric[b]	$55,489,558[c]	$ 9,740,739[d]	$ 3,530,151	$ 3,529,091	$ 2,319,417
Gas	1,676,152	638,711[e]	157,109	163,998	128,806
Water	1,570,771	235,375	50,009	49,715	14,686
Ice	557,180	118,643	48,026*	36,575*	36,575*
Total	$59,293,661	$10,733,468	$ 3,689,243	$ 3,706,229	$ 2,426,334

* Indicates deficit.

[a] Based on Gulf's proposed new allocations of interdepartmental expenses.

[b] Includes steam property and revenues.

[c] Includes $419,333 of common utility plant acquisition adjustments, and $5,149,525 of electric plant acquisition adjustments.

[d] Not including $745,642 from sale of electric appliances.

[e] Not including $81,215 from sale of gas appliances.

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Gulf's electric utility system serves a territory of approximately 27,000 square miles in size in southwestern Louisiana and southeastern Texas. The electric system, about 350 miles long, extends from approximately 20 miles east of Baton Rouge in Louisiana (and continuing about 175 miles in Louisiana) to approximately the lower reaches of the Brazos River in Texas. It serves a population of about 405,000 of whom some 92,000 are customers. The principal cities in which electric energy is furnished (and their estimated 1940 population) are:

Texas		Louisiana	
Beaumont	60,000	Baton Rouge	38,000
Port Arthur	46,000	Lake Charles	23,000
Orange	9,500	Jennings	7,400
Huntsville	6,500		
Navasota	6,300		

The system, whose principal steam generating plants are located in Beaumont, Texas, and Baton Rouge, Louisiana, and have installed capacities of 85,000 kw and 88,500 kw, respectively, has a generating capacity of 191,768 kw of which 190,620 kw is steam and 1,148 is internal combustion capacity. The electric facilities are interconnected throughout except for the properties at Jasper and Alvin in Texas. We have found that the electric utility properties of Gulf (exclusive of the properties at Alvin and Jasper which we will discuss later in this opinion) constitute an integrated public utility system within the meaning of Section 2 (a) (29) (A) of the Act. (*Engineers Public Service Company, et al., supra,* n. 3.)

A. *The "Other Businesses" Sought to be Retained by Engineers if Gulf Is Engineers' Principal System.*

Gulf not only operates an electric utility and a gas utility system, but, as we have pointed out, it is also engaged in various non-utility operations. It maintains a steam business, an ice business, and a water business, and it engages in appliance merchandising. In addition, a trans-

portation business, the Baton Rouge Bus Company, although a direct subsidiary of Engineers, is in some respects conducted under Gulf's auspices. Respondents contend that these businesses are retainable by Engineers along with the Gulf electric system because they are reasonably incidental or economically necessary or appropriate to those electric operations, within the meaning of Section 11 (b) (1).

1. *The Transportation Business—Baton Rouge Bus Company, Inc.*

The Baton Rouge Bus Company operates a bus transportation system in and around the City of Baton Rouge, Louisiana, serving a population of approximately 70,000. For service over its 14 miles of bus routes the company has 32 busses in operation. On December 31, 1940 the company's plant account totalled $271,747; its operating revenues for the twelve months ended that date were $275,148, its net operating revenues for that period were $35,061, and its net income was $34,938. During 1940, the busses operated an aggregate of 1,168,000 revenue miles and carried 5,543,000 passengers.

Except for a few joint executives and office employees and the use of space in the Gulf office building in Baton Rouge, the transportation system is entirely independent, in its operations, of the electric system. The joint employees, other than the executives, are telephone operators, pay-roll clerks, accountants and other general office functionaries The office space used is small, its fair rental value, according to respondents, being $75 per month.

In advocating the retainability of these transportation properties as reasonably incidental to the operations of the electric system, respondents urge many of the arguments which they urged with respect to the retainability of Virginia's transportation system. The long historical association of the electric and bus properties, the joint use of facilities and employees (albeit considerably smaller than in the case of Virginia), and the profitable nature of the

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transportation business are all contentions which we dealt with in considering Virginia's transportation properties.[37] They are as unpersuasive here as they were there.

As in their treatment of the combination of Virginia's electric and transportation properties, respondents contend also that the severance of the Baton Rouge Bus Company from common control with the Gulf electric system will increase the expenses of operating the latter. This increase is asserted to stem almost entirely from the necessity for continuing the present compensation of the joint employees whose salary is now partially derived from the bus operations. Although serious questions arise as to both the relevance of respondents' contentions and the accuracy of their estimates in this respect, even were we to agree with their presentation, we cannot find that the business is retainable. In the first place, the increased expense claimed amounts to about ½ of 1% of Gulf's net income. In the second place, as we indicated above, Section 11(b)(1) does not require a mechanical adherence to mathematics. In determining whether the public interest and the proper functioning of the electric system will best be served by severance of the transportation properties, we must measure the advantages of undivided attention to the electric business by the present joint employees and executives as against the minute saving claimed.

Even less than Virginia's transportation properties are the Baton Rouge bus operations incidental or economically necessary or appropriate to the utility operations involved. Unlike the Virginia transportation system, the Baton Rouge properties are entirely bus properties. No contention with respect to load building can be made.[38] Moreover, also in contrast to the Virginia operations, no free transportation is furnished by the Baton Rouge Bus Company to the electric system's employees. Even the claims to incidentality asserted in these respects in connection with the Virginia transportation system are thus wholly absent in this case.

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[37] See discussion, *supra*, p. 9, *et seq.*

[38] Nor can any benefit to the bus company be found in the fact that Gulf supplies it with electric current in its garages and shops, since the electricity is sold to Baton Rouge at Gulf's regular published rates.

And, as respondents' witnesses themselves point out, except for the joint office space and joint office personnel, the transportation system is operated as a self-contained unit, separate from the electric system. The relationship between the two companies is thus little different from the relationship between an electric utility enterprise and any other business supplying goods or services to the public. Although accounting and executive operations may be amalgamated and performed more cheaply than would be the case if the two enterprises were separately owned, as far as actually operating the business and providing its services are concerned, there is no relationship between the two companies. On the basis of the record before us, we cannot find that the operation of the Baton Rouge Bus Company is reasonably incidental or economically necessary or appropriate to the operation of Gulf's electric system. We conclude that it must be separated from the Engineers holding company system.

2. *The Water Business*

Gulf owns and operates a water business which serves three communities in Louisiana (Lake Charles, Denham Springs and Carenco)[39] and four communities in Texas (Orange, Navasota, Franklin and Calvert). The largest of these water properties, operating 57 of the company's 119 miles of water mains, are those at Lake Charles, which, according to respondents, represent an investment of $830,000. Of an aggregate population of 44,450 in all these towns, 7,759 were water customers on December 31, 1940. The aggregate pumping capacity of all the water plants, as of that date, amounted to about 20,350,000 gallons daily. The annual sales amounted to 584,000,000 gallons in 1940.

In urging the retainability of these properties as "other businesses" the respondents claim that the water and electric systems are operationally related, that certain economies attend the use of joint personnel and facilities, and that it is difficult, if not impossible, to dispose of the water

[39] The water properties at Carenco are owned by the city and leased by Gulf.

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property without a substantial loss because the equipment used in water operations is located on the site of the electric equipment. The joint employees are engaged largely in supervisory, administrative or repair work.[40] The facilities which are actually used jointly by both departments are limited to occasional water testing apparatus, automotive and other non-operational facilities. Aside from common ownership and the use of these limited joint employees and facilities, the water properties are operated as an independent enterprise. They are in no sense either an adjunct to or a by-product of the electric operations. The fact that Gulf's electric system supplies them with electric energy does not, as respondents admit, make the water business incidental to the electric business. In short, here, too, the "other business" is no more closely related to the operation of an electric system than any other business which supplies the consuming public with services or products and uses the electric system's energy in its operations.

Respondents assert that the severance of the water properties will increase the expense of electric operations by requiring the electric system to support a number of employees who now derive a portion of their salaries from water operations. Assuming the relevance of this contention we cannot overlook the fact that the electric business is expanding and that the freed time of these employees will not be wasted. Nor can we ignore the effect on the proper functioning of the electric system which can be expected to accompany the undivided attention of the company's organization to electric operations.

Although within recent years Gulf has sold portions of its water properties, the respondents insist that with respect to the properties presently at issue the machinery used in the water business is so physically interspersed with the electric equipment that any order requiring the disposition of the water properties will also require the virtual scrapping of this machinery. The record before us,

[40] In at least one case, Lake Charles, the respondents admit that the water plant personnel is, for the most part, different from the electric plant personnel.

however, discloses that with respect to many of these very water properties the respondents have not felt this obstacle to be insurmountable and have commenced negotiations for their sale at one time or another within the past six years. Moreover, where the equipment is, in fact, so interspersed as to be incapable of being independently operated without being moved and so constructed as to be incapable of being moved, it is possible, as the president of Gulf pointed out, that an "arrangement may be worked out whereby this equipment can be sold and easement rights granted to the purchaser for use of the land on which it is situated for a reasonable period." An examination of the maps and other evidence introduced by respondents indicates that difficulties of disposition of this character may exist with respect to only one or two of the properties. While such difficulties may affect the length of the period within which the divestiture of these properties must be executed, they cannot be accepted as tests of the retainability of the properties. Accordingly, we cannot find that the water operations meet the requirements for retention as an "other business", and we must order their divestiture.

3. *The Ice Business.*

Ice is produced and distributed by Gulf in 9 communities in Texas (including the town of Alvin) which have a total population of 43,000. Although the aggregate capacity of the ice plants in these towns is about 225 tons per day, sales for 1940 totalled only 19,100 tons. In 7 other towns in Texas the company also owns ice vaults of which 6 were leased to local dealers.

Unlike Virginia's ice properties at Williamsburg, Gulf's ice operations are not designed to, and do not, assist in the operation of the electric business.[41] On the contrary, although they were acquired together with electric properties and at present share joint facilities and employees with the latter, they have been operated primarily as a business of independent significance. As respondents' tes-

[41] Compare *supra*, p. 14.

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timony makes clear, the business is in no way useful or necessary to the production or distribution of electricity and is in no way a by-product thereof. Gulf has in the recent past sold many of its ice properties and at present is admittedly seeking to withdraw entirely from the business. The company's attitude is understandable in view of the fact that the ice business operates at a loss, even before depreciation is charged to its properties. Yet, it is contended that the physical difficulties of severance and the losses attendant thereon, when taken in conjunction with the fact that the electric operations will be required to absorb the entire expense of formerly joint employees and facilities, render the business reasonably incidental or economically necessary or appropriate to the operations of the electric properties. Not only do we find that respondents' claims in this connection are not valid, but, in view of the unprofitable character of the business, the lack of any substantial relationship to the ends of the electric business, and the advantages of having the Gulf organization concentrate its energies on the electric business, we find that continued retention of the ice business (including that at Alvin) is detrimental to the proper functioning of Gulf's electric system. We cannot find that the ice business is reasonably incidental or economically necessary or appropriate to the operations of the Gulf electric system. The ice properties, must, therefore, be severed from common control with Gulf's electric system.

4. *The Steam Business.*

The steam business conducted by Gulf consists largely of the sale of steam which is produced in connection with the generation of electricity at the company's Louisiana steam plant at Baton Rouge, to three large industrial customers located in the immediate vicinity. This plant was designed to burn gas, acid-sludge, coke and fuel (in almost any combination) some of which are obtained as waste by-products from the industrial establishments supplied with steam. During 1940, steam sales to industrial customers

aggregated 10,102 millions of pounds and maximum demand amounted to 1,374,000 pounds per hour. Steam revenues during 1940 amounted to $419,078. From its Sabine plant in Orange, Texas, Gulf supplies steam in small quantities to a nearby commercial enterprise, and receives small annual returns from these operations which rarely exceed $1,000 and which are used to defray the expenses of operating the Sabine plant.

The record discloses further that the production of steam in respondents' electric generating plants, through the use of machinery specially designed to enable this combined operation, is both in intent and in fact integrally related to the production of electric energy. We, therefore, find that the steam business is reasonably incidental and economically appropriate to the operation of the electric system and may be retained as such.

5. *The Merchandising and Jobbing Business.*

Gulf is engaged in the electric merchandising and jobbing business in connection with the promotion and sale of electric energy in the territory served with electricity (including the town of Alvin), and in the gas merchandising and jobbing business in connection with the promotion of the sale of gas in the territory served with gas.

Gross revenues from the sale and rental of electric appliances amounted to $747,141 in 1940, and according to respondents' books, net income totalled $19,012. In 1940 the gas appliance business derived a gross revenue of $82,996 from sales and rentals and a net income per books of $4,990. However, if interdepartmental expenses had been allocated in accordance with the method proposed by Gulf for future operations, total income from both businesses would have been about $3,800. There is evidence in the record which tends to show that the sales effected through these businesses have increased the consumption of gas and electricity.

The electric appliance merchandising business conducted by Gulf is, for the present purposes, not significantly distin-

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guishable from that conducted by Virginia. From the record before us, and for the reasons previously adverted to,[42] we find that it is economically appropriate to the operation of the retainable electric utility systems and may therefore be retained.

Although the record also discloses that the gas appliance merchandising business is reasonably incidental to the operation of Gulf's gas utility system, it is not, of course, so related to the electric system. Since the gas system, as we shall see, must be disposed of, the gas appliance merchandising business cannot be retained.

B. *Additional Systems Sought to Be Retained by Engineers Along With Gulf's Electric Utility System.*

1. *Gulf Gas Properties at Baton Rouge.*

Gulf distributes natural gas to customers in Baton Rouge, Louisiana, and its suburbs, a territory of about 15 square miles in area with a population of 70,000. Its gas distribution system as of December 31, 1940 consisted of about 169 miles of main, 52 of which were low pressure system mains and 117 of which were intermediate pressure system mains. On January 1, 1941 there were 12,542 gas customers, 11,392 of whom were classed as residential and 1,150 as commercial and industrial. Gulf purchases the gas which it distributes from the Interstate Natural Gas Company, Inc., an unaffiliated company. In 1940 it bought 1,168,309,000 cubic feet and sold 1,114,578,000 cubic feet of gas.

The following figures indicate the size and earnings of the Gulf gas system at Baton Rouge in comparison with Gulf properties as a whole:

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[42] See discussion *supra*, p. 15 *et seq.*

	Utility Plant Account as of Dec. 31, 1940	Operating Revenues for Year Ending Dec. 31, 1940	Net Income After Interest and Taxes for Year Ending Dec. 31, 1940
Gas system at Baton Rouge	$ 1,676,152	$ 638,711[a]	$ 128,806
Remainder of properties[c]	57,617,509	10,094,757[b]	2,297,528
Total of Gulf properties[c]	59,293,661	10,733,468	2,426,334
Percentage gas system to total	2.8%	5.9%	5.3%

[a] Not including $81,215 from sale of gas appliances.
[b] Not including $745,642 from sale of electric appliances.
[c] See p. 31 for a breakdown of these figures for the several properties.

We find that the gas properties of Gulf constitute an integrated public-utility system within the meaning of Section 2 (a) (29) (B). Their retainability as a system additional to Gulf's electric system depends, of course, upon our finding that (A), (B) and (C) standards of Section 11 (b) (1) would be met by such retention.

It is obvious that the requirements of Clause (B) are met, since the gas properties operate in the same state as a large portion of the electric system.

We find further that the combination of the gas system and the electric system meets the standards of Clause (C). The gas service area, which is urban and industrialized, has a population of 70,000. The gas system's 12,542 customers (as of January 1, 1941) were all apparently also customers of the Gulf electric system. The service area of the gas system does not form an addition to the area of the electric system, since it coincides with a portion of it. The utility plant account of the gas system amounts to $1,676,152 (as of December 31, 1940), and, when added to the electric utility plant account of $55,070,226, increases the latter figure by only 3 percent. Operating revenues of the gas system for the year ending December 31, 1940, were $638,711 and, when added to those of the electric system ($9,740,739) increased the latter by 6.5 percent. The net income of the gas system for the same period was $128,806, and, when added to that of the electric system, ($2,319,417) increased

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the latter by 5.5 percent. The rates and services of the gas and electric systems in Louisiana are under the jurisdiction of the Department of Public Service. In Texas the company's electric rates are subject to the jurisdiction of municipal authorities, and both such rates and those in unincorporated towns and rural sections are subject to the authority of the state district court to declare unlawful an extortionate or unreasonable rate. It thus appears that the continued combination of the gas and electric systems is not so large in view of the state of the art and the area or region affected as to impair the advantages of localized management, efficient operation, and the effectiveness of regulation.

The question remains, however, whether the (A) standdard would be met by the retention of the gas properties as an additional system.

Evidence on this point introduced by the respondents indicated that, if the gas business were owned and operated by an independent company, the increased costs to the gas company would amount to $42,024, and the increased costs to the Gulf electric system[43] would amount to $52,452, a total of $94,476. Again we need not for present purposes adopt the contention of the Public Utilities Division that the "loss of substantial economies" in the (A) standard refers exclusively to economies lost to the additional system. Assuming *arguendo* that respondents' interpretation of Clause (A) is correct—that the clause refers to economies lost to both the principal system and the additional system—we cannot find a loss of substantial economies.

A comparison of the loss which, it is stated, would be borne by the electric department—$52,452—with its net income of $2,319,417[44] indicates a loss of 2.3 percent. A similar comparison with the electric department's gross income of $3,529,091 indicates a loss of 1.5 percent, and a comparison with the electric department's operating

[43] The figures in the record on increased costs relate to those of the gas department, on the one hand, and to those of Gulf States Utilities Co. (minus its gas department), on the other hand. We assume, however, that it is substantially accurate to attribute to the electric system the increased costs stated to accrue to Gulf as a whole (minus its gas department).

[44] See p. 31 for a breakdown of Gulf's net income.

expenses of $6,210,588 indicates an increase in expenses of less than 1 percent. The asserted loss of economies to the principal system thus cannot be regarded as substantial. We, therefore, confine our discussion to an effort at finding the lost economies, if any, which would be suffered by the gas system alone under independent operation and to a determination of whether such losses would be substantial.

Respondents introduced an exhibit purporting to show "certain increased costs which would result if the gas properties and gas business (including sale of gas appliances) of Gulf States Utilities Company were owned and operated by an independent company." As previously indicated, the total of these increased expenses to the gas system, stated to be $42,024, does not constitute lost economies arising from the independent operation of the gas system, since it ignores compensating factors. These asserted losses represent 8.7 percent of the gas department's operating expenses, 25.6 percent of its gross income, and 32.6 percent of its net income for 1940. We believe, however, that as estimates of lost economies they are in several respects overstated.

Respondents list an annual increase for executive salaries and supervisory services for the independent gas company over the present allocated cost of such salaries and services to the gas department of Gulf. As we indicated in our discussion of the Virginia gas properties,[45] the increase in executive salaries must be offset to some extent—if an indeterminate one—by the fact that the executives will devote all their time to the management of the gas company, in contrast to the slight proportion of time devoted to the gas department by the present Gulf executives.

The expenditure for continuous supervision by a company, such as the Stone & Webster Service Corporation, we regard as of doubtful necessity. It appears that virtually no independent gas company in the country makes use of

[45] *Supra*, p. 20.

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such outside managerial supervision,[46] and we doubt whether the gas system, if divested by Gulf, need do so.

Our examination of the claimed increase in payroll for additional personnel (other than executive) allegedly necessitated by the separate operation of the gas properties convinces us that it is overstated by a substantial amount, and the figures presented for payroll taxes are correspondingly overstated.

Further, respondents estimated that an investment of $95,000 will be required for land, building and equipment to be used as garage and shop facilities for a fleet of 22 motor vehicles, a laboratory room, a meter testing room, a storeroom, and general desk space for supervisors and service men. The interest, taxes and depreciation, they estimate, will cost $11,160 annually, an increase of $6,294 over the present allocated cost of such quarters to the gas property. Considering the nature and purposes of this building, these figures appear to us to be overstated.

Similar overstatements appear in a number of other accounts.[47] We note also that the method of allocating expenses between departments was revised by Gulf during the pendency of these proceedings, but that the basis for allocating expenses of joint employees suggested to Engineers by independent accountants was not followed, although it might admittedly have resulted in figures differing from those arrived at through the respondents' method. How such difference would affect the amounts which the respond-

[46] Brown's Directory of American Gas Companies. The reference by the respondent to lower general and administrative expenses for one company with such a contract in comparison with another company without such a contract is not persuasive in the absence of a discussion of any number of other possible factors which might lead to this result.

[47] Among such other items are lost economies attributed to the operation of the gas merchandising and jobbing business, apart from the principal utility system. If such lost economies can, in fact, be expected, they are attributable, strictly speaking, not to the separate operations of the gas and electric utility systems, but rather to the conduct of gas merchandising and jobbing activity (which we here regard as incidental to the operation of the gas system) apart from the operation of the electric utility system. The statute, however, draws a clear demarcation between additional systems and incidental businesses, and its standards for the retention of the two are different. It is by no means clear that its language permits alleged lost economies in the operation of a merchandising and jobbing business independently of the principal system to affect the retainability of an additional system under the (A) standard.

ents claim would be lost by divestment of the gas properties cannot, of course, be determined.

We must also consider a possible failure to take advantage of all available economies in the gas operation. As we indicated above,[48] competing gas and electric services under a single management may result in the suppression of one service in favor of the other. A personnel whose sole aim is the operation of a gas system may be able to tap sources of efficiency and economy which perhaps were overlooked when the system was managed jointly with a considerably larger and more remunerative electric system.

Weighing all these considerations, we cannot find that the economies lost through the operation of the gas system as an independent system would be substantial, and, therefore, we cannot make the finding under Clause (A) which is necessary for the retention of the gas properties with the Gulf electric system.

2. *Electric Utility Properties at Alvin, Texas.*

Gulf owns and operates an electric utility business, an electric merchandising business and an ice business serving the city of Alvin, Texas, and vicinity, 112 miles from Beaumont, the nearest general office of Gulf. The Alvin electric system, principally a distribution system, is not physically connected with Gulf and is admittedly not economically capable of such interconnection. Electric energy for the distribution system at Alvin is purchased from the Houston Lighting and Power Company.[49] While the Alvin plant contains a 50-kilowatt engine-driven generating plant, it is used only for partial standby service. The energy is dis-

[48] See *supra*, p. 18.

[49] The common stock of Houston Lighting and Power Company, which on August 31, 1941, was practically entirely owned by National Power & Light Company, a subholding company subsidiary of Electric Bond and Share Company, is now in the process of being exchanged for preferred shares of National at the rate of two shares of Houston's common for one share of National's preferred. This action was taken pursuant to a plan filed by National intended to effectuate in part our order directing the dissolution of National. *Electric Bond and Share Company, et al.*, 9 S. E. C. ..... (1941), Holding Company Act Release No. 2962; *National Power & Light Company*, 10 S. E. C. ..... (1941), Holding Company Act Releases Nos. 3211, 3228; *National Power & Light Company*, 11 S. E. C. ..... (1942), Holding Company Act Release No. 3612.

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tributed over 62.67 miles of pole line serving, on September 30, 1941, 988 customers.

The electric plant account for the Alvin properties as of August 31, 1941, was $227,174.06 and the ice plant account was $33,138.49, a total of $260,312.55.

A superintendent and staff at Alvin operate the property under the close supervision of a division superintendent at Navasota, Texas, and under the general supervision of the Beaumont office of Gulf, which furnishes such services as engineering, accounting, purchasing and new business, and handles such matters as customers' billing and accounting, rates and taxes.

Gulf's income from electric, ice, and merchandising and jobbing at Alvin for 1940 is stated by respondents as follows:

Revenues		$78,963.22
Direct expenses	$44,439.18	
Direct taxes	5,513.00	49,952.18
Balance		$29,011.04

The expenses do not include charges arising from costs of the company's general staffs for services they perform for Alvin.

We believe that the electric utility property at Alvin does not constitute an integrated public utility system within the definition of Section 2 (a) (29) (A). In pertinent part, that section defines an integrated public utility system as:

> "... consisting of one or more units of ... distributing facilities, whose utility assets ... are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, ... not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

An electric distribution system without generating or transmitting facilities may thus constitute an integrated public utility system, provided, of course, that it meets the other terms of the definition. However, considering the character of the operations at Alvin the electric utility property there does not in our opinion fall within the terms of the definition. The property is small, serving less than 1,000 customers. It is owned by Gulf and depends for a number of its services on the Gulf organization and personnel. Nevertheless, it is 112 miles from Beaumont and is not interconnected with the Gulf system. It is completely surrounded by territory served by Houston Lighting and Power Company and depends upon that company for its electric energy.

Section 1 (b) (4) of the Act declares:

> ". . . that the national public interest, the interest of investors in the securities of holding companies and their subsidiary companies and affiliates . . . are or may be adversely affected . . . when the growth and extension of holding companies bears no relation to economy of management and operation or the interpretation and coordination of related operating properties."

Situations in which a property like Alvin, surrounded entirely by one system, on which it is completely dependent for electric energy, belongs to another system with which it has no operating or functional relationship appear to us to contravene the declared Congressional policy. In view of our discussion here, we do not regard it as an integrated public utility system. It, therefore, cannot be retained by Gulf as an additional system.

3. *Electric Utility Properties at Jasper, Texas.*

Gulf owns and operates an electric utility and an electric merchandising business serving the city of Jasper, Texas, and vicinity, 73 miles from Beaumont. The Jasper electric system is not physically connected with that of Gulf and is not economically capable of such interconnection.

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The electric plant account for the Jasper properties as of August 31, 1941 was $234,786.41. Electric energy is furnished by a diesel generating plant with a capacity of 848 kilowatts, and is distributed over a system of 35.13 miles of pole line. A superintendent and staff operate the property under the supervision of the Beaumont office of Gulf, which also furnishes such services as engineering, construction and maintenance, accounting, purchasing and new business, and handles such matters as customers' billing and accounting, rates and taxes.

In May, 1941, the city of Jasper completed and placed into operation a municipal power plant using oil engine power and having a capacity of 550 kilowatts. On September 30, 1941, the municipal plant served 249 customers, all within the city limits, while the Jasper plant served 560 customers in the city and vicinity. This represents a decline of 182, or about ¼, of Jasper's customers from December 31, 1940, and it is expected that on this basis revenues, which in 1940 totalled $57,311.06, would be reduced by about $13,000 annually. According to Gulf "after the competitive situation has become stabilized, consideration will be given to the Jasper organization with a view to continuing it on a profitable basis."

We find that the electric utility property at Jasper constitutes an integrated public utility system within the meaning of Section 2 (a) (29) (A) and that, with Gulf as the principal system, it meets the (B) standard of Section 11 (b) (1) for an additional system.

Whether the (A) and (C) standards have been met, however, is not as clear. With respect to the former, Gulf estimates that if its Jasper property were ordered to be divested, a service contract and the addition of employees to provide the services formerly rendered by Gulf would cost $7,800, which is stated to represent the loss of economies arising out of the independent operation of Jasper. On the other hand, on the record before us, and in view of the situation in which the Jasper property now finds itself *vis-a-vis* the municipal plant, we have doubts as to whether any economies accrue through the present retention of

Jasper in the Gulf system.[50] In view of our further uncertainty on the present record as to whether economies will be lost on divestment or whether the retention of Jasper will meet the (C) standard, we believe that a fuller exploration of the questions is necessary. Accordingly, if Engineers selects Gulf as its principal system the record will be reopened for the admission of evidence on these points.

4. *El Paso Electric Company.*

(a) Requirements of Clause (A) of Section 11 (b) (1).

As an additional system to Gulf's electric system respondent Engineers also seek to retain the electric utility system owned by El Paso Electric Company (Texas), all of whose common stock is held by El Paso Electric Company (Delaware). The Delaware company, itself a subsidiary of Engineers, is a holding company owning, in addition to the securities of El Paso Electric Company (Texas), all of the capital stock of El Paso and Juarez Traction Company.[51] El Paso Electric Company (Texas) operates an electric utility system and is also engaged in the street railway, bus, toll bridge and merchandising businesses. El Paso and Juarez Traction Company is engaged in the street railway and toll bridge businesses. Their combined plant account, as of December 31, 1940, and their operating revenues, net operating revenues, gross income and net income for the twelve months ended that date were as follows:

	Plant Account	Operating Revenues	Net Operating Revenues	Gross Income	Net Income
Electric	$12,301,947	$2,782,918	$ 926,971	$ 918,680	$438,924
Street Railway	1,788,725	281,621	.....	.....	.....
Bus	295,906	251,759	85,153	81,975	72,481
Toll Bridge	339,020	141,237	.....	.....	.....
Total	$14,725,598	$3,457,535	$1,012,124	$1,000,655	$508,082[a]

[a] Based on El Paso's proposed new method of allocating interdepartmental expenses.
[b] Including a deficit of $3,323 from appliance merchandising operations.

[50] However, the record is devoid of any evidence that the losses of economies allegedly resulting from Gulf's divestment of its Jasper properties either will or will not be obviated by their acquisition by the city of Jasper.

[51] In December, 1940, Mesilla Valley Electric Company, a subsidiary of El Paso (Delaware), was merged with, and its properties taken by El Paso (Texas). *El Paso Electric Company, et al.*, 8 S. E. C. 366 (1940).

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The electric system owned and operated by El Paso (Texas) serves an estimated population of 169,000 living in an area of approximately 700 square miles. This area is located in the Rio Grande Valley at the extreme western end of Texas and the southeastern part of New Mexico and covers a narrow strip of territory approximately 220 miles long and rarely more than 5 miles wide, extending from Arrey, New Mexico, southeast to El Paso, Texas, and continuing southeast to Gills Ranch, Texas. The region served is surrounded by mountains and desert and is geographically isolated from any other population centers. While, since December, 1940, the El Paso system has been interconnected with the hydro-generating plant at Elephant Butte Dam, New Mexico, 130 miles north of El Paso, by a transmission line built by the United States Bureau of Reclamation, there is no other electric system within a radius of several hundred miles. The electric system's 30,341 customers (as of December 31, 1940) were located in El Paso, Texas (population 98,000), Las Cruces, New Mexico (population 8,400), and 48 small towns and settlements, the majority of which have a population under 250.

Electric power is generated in two steam plants having an aggregate capacity of 56,000 kw. However, because of certain limitations on the boiler capacity of the main plant, the Rio Grande steam plant, the system's aggregate generating capacity is reduced to an actual capacity of 42,500-45,000 kw. The other substantial plant in the system, a steam plant located at Santa Fe, has a present generating capacity of 12,500 kw. but is used principally as a reserve plant. It operated about 14.5% of the time in 1940 and generated 3,500,000 kwh. as compared with a net of 154,665,600 kwh. generated by the entire system.

The distribution system, as of December 31, 1940, included 275 miles of pole lines of 6.6 kv. and over 757 miles of pole lines of less than 6.6 kv. With the exception of the electric utility properties serving the city of Sierra Blanca, Texas, and vicinity and the city of Van Horn, Texas, the system's properties are entirely interconnected. Sierra Blanca is approximately 20 miles from the main electric

system of the company, and the energy at that point is presently obtained from a small internal combustion plant. On the basis of an increased load, which respondents anticipate, at Sierra Blanca, the properties located there are now being interconnected with the main El Paso system. We find that, with the exception of the Van Horn properties, El Paso's electric utility properties constitute an integrated public utility system within the meaning of Section 2 (a) (29) (A) of the Public Utility Holding Company Act.

In urging that the integrated electric utility system of El Paso (Texas) is retainable by Engineers along with Gulf's electric system under the standards of Clause (A) of Section 11 (b) (1),[52] the respondents assert that the requisite substantial economies which may be obtained by combining El Paso with Gulf consist of savings of $50,700 annually in the operation of the two companies.[53] These savings are computed by subtracting from the estimated cost of providing assertedly necessary supervisory assistance and services to both companies, if independent, the estimated cost of these services if the companies are under common control. As in the case of the Virginia-Savannah combination, this hypothetical comparison is indulged because respondents claim that it would not be practicable for the present service company to perform services for properties as small as the largest possible combination of Gulf and El Paso. And, also, as in the case of Virginia and Savannah, these savings occur not in the physical, day-to-day operation of the properties but largely in the administrative, accounting and financial conduct of the business. Moreover, the utilization of such services which are for the most part supervisory or consultative in character, might well be found in any two separately operated, but commonly controlled, similar businesses. These alleged values of common control were, as we have said, repeatedly

[52] This combination has already been found not inconsistent with the requirements of Clause (B). *Engineers Public Service Company, et al., supra*, n. 3.

[53] Although it is also claimed generally that the retention of the two companies under Engineers' control will facilitate obtaining equity money for the subsidiaries through Engineers, the history of this system furnished no support for the claim and the record does not sustain the allegation.

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called to the attention of Congress during the consideration of the Holding Company Act.

Though respondents' estimates are in terms of expense rather than ultimate economy, if we accept their figures the economies asserted as substantial amount to $50,700 ($12,000 of which is allocable to Gulf, $32,800 to El Paso, and the remainder to the Baton Rouge Bus Company). In their 1940 electric operations the two public utility companies produced net incomes, respectively, of $2,319,417 and $438,924, gross incomes, respectively, of $3,529,091 and $918,680, and had operating expenses, respectively, of $6,210,587 and $1,855,947. Expressed percentagewise, the loss of economies claimed to accompany separation would represent .5% of Gulf's net and .3% of Gulf's gross income from electric operations and 7.4% of El Paso's net and 3.6% of its gross income from electric operations. Or put another way, the respondents' claims would reflect an increase in operating expenses of .2% to Gulf's and 1.8% to El Paso's electric system.[54] In view of the background and meaning of the Congressional requirement that the loss in economies, resulting from the severance of a utility system from a holding company system, must be substantial, we cannot find that the combination of Gulf's and El Paso's electric systems is permissible under the standards of Clause (A), even if we accept these hypothetical figures as the exclusive criterion.

When it is considered that the economies of common control are not in fact as substantial as those claimed, this conclusion is strengthened. In the first place, the extent of the economies must be reduced because these estimates include savings in the operation of transportation properties which must be separated from the holding company system. Moreover, since we must reject respondents' contention that all the proposed additional executive assistance is necessary and that none of the functions to be performed by these experts can be efficiently performed by the present operating executives, the economies claimed are further

[54] These figures are based upon the proposed methods of allocating interdepartmental expenses.

diminished. Not only are these contentions not borne out by the record, but the testimony of the treasurer of El Paso, L. F. Yetman, indicates that, given the opportunity, the operating executives can perform many of the functions contemplated for the additional experts. And when the cost of obtaining the additional services claimed to be necessary is examined, it is found to be less than is claimed.

For example, serious doubts arise as to the necessity and alleged cost of all the assertedly necessary expert assistance when we consider respondents' statement that "such reinforcement would be needed without material change regardless of whether the present gas operations are continued in the system and irrespective of the disposition of the incidental businesses of the various companies." The accuracy of an estimated expense of personnel, which will not be diminished when the scope of the operations of the enterprise is considerably reduced, is at least suspect. And further doubt is cast upon the accuracy of these estimates when we consider that the salaries proposed to be paid to the allegedly necessary expert assistance for the entire requirements of the Virginia-Savannah and Gulf-El Paso-Baton Rouge combinations are almost the equivalent of the salaries presently paid to the experts of the mutual service company for performing roughly equivalent services for the entire Engineers system.

On the record before us, therefore, it is clear that the economies—if any—which will be lost on separating the two electric utility systems are not such as would justify the retention of El Paso by Engineers along with Gulf, under the standards of Clause (A) of Section 11 (b) (1).

(b) Requirements of Clause (C) of Section 11 (b) (1).

For the El Paso electric system to be retained by Engineers along with Gulf it is also necessary, as we have pointed out in connection with the Virginia-Savannah combination, that, in addition to the standards of Clause (A) of Section 11 (b) (1), those of Clause (C) be met.

As has already been indicated, geographical considerations, among others, are involved in determining whether

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a combination is permissible under this clause. Gulf's service area of some 27,000 square miles is, as has been shown, located in southwest Louisiana and southeast Texas. 92.2% of the 270 communities served have a population of less than 2,500. Aside from a few larger centers, such as Baton Rouge, Beaumont, Port Arthur and Lake Charles, the service area is essentially rural. Although the region's economic characteristics are predominantly agricultural and pastoral, the production, refining and distribution of oil and gas furnish an important electric load.

El Paso serves an area of some 700 square miles in the Rio Grande Valley in western Texas and southeast New Mexico. Except for the City of El Paso, the system's service is confined to a narrow valley surrounded by mountains and desert, which is also largely pastoral in its economic character.

Between the Gulf and El Paso electric systems there is no operating relationship. Between their service areas there is not much intercourse and little in common geographically, politically or economically. The two areas served are 500 miles apart at their closest points and almost 1,000 miles apart at their furthest points. 750 miles separate the principal offices of each. In many ways the two systems are even further apart then Virginia and Savannah. Accordingly, it is even more apparent that an executive staff in Beaumont is not "localized management" as far as El Paso's needs are concerned. Although Beaumont is closer to El Paso than New York, we cannot find, in view of the distance and differences between the two regions served, that the removal of the management to Beaumont from New York will so materially alter its sensitivity to El Paso's problems as to afford for the population of El Paso's service area the advantages of localized management. We cannot find from the record before us that the combination of Gulf and El Paso is not so large as to impair the advantages of localized management.

In applying the standards of Clause (C) we are also enjoined to have regard to the effect of the size of the combination on the effectiveness of regulation. Not only

are El Paso's properties separated by about 700 miles from Gulf's but the combination is scattered over three states. While the Louisiana and New Mexico properties are subject to regulation by the respective Public Service Commissions of the two states, in Texas the properties are not regulated by a state agency. Regulation of these latter properties depends upon the municipalities served and the State district courts. Therefore, the combination presently proposed would be subject to regulation by Louisiana and New Mexico state agencies and by each of the widely separated Texas communities in which it performs service. But most of the properties of the combination do not come within the competence of a small number of local agencies. Nor are they even divided between two State regulatory agencies. That a combination which can be locally regulated only by so scattered and diverse a group of regulatory bodies is not so large as to impair the effectiveness of regulation is at least questionable.

The record before us does not sustain a finding that the combination here proposed meets the standards of Clause (C) of Section 11 (b) (1). Since Engineers' retention of El Paso (Texas) along with Gulf cannot be permitted under Section 11 (b) (1), we must order Engineers to dispose of all its interests, direct and indirect, in El Paso (Texas).

Before leaving the problem of Clause (C) it is not inappropriate to comment on another of respondents' contentions. It is urged that because the combined electric plant account of Gulf and El Paso is not so large as that of Virginia, which we have found to be a single integrated electric utility system, the *combination* cannot be "so large . . . as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation." But in determining this question, we must consider the "state of the art and the area or region affected." While the area or region affected by Virginia may be such as not to render Virginia's size unduly large, it does not mechanically follow that a combination which is smaller in the magnitude of its financial operation is not, in another area or region, so large as to impair the advantages of localized manage-

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ment, efficient operation, or the effectiveness of regulation. To accede to respondents' argument would lead to the conclusion that any combination whose financial magnitude is smaller than any public utility which we have found to constitute an integrated system must *ipso facto* be not so large as to violate the (C) standard. The statute cannot be so construed.

Since the electric utility system of El Paso (Texas) is part of the holding company system of El Paso (Delaware), a registered public utility holding company, and a respondent in this proceeding, we will later in this opinion consider the other businesses sought to be retained by El Paso (Delaware) along with this electric system under the standards of Section 11 (b) (1). At this point, however, it is appropriate to examine whether any integrated public utility systems may be retained by El Paso (Delaware) in addition to El Paso's (Texas) integrated electric utility system.

El Paso (Texas) owns and operates an electric utility system serving approximately 200 customers in the town of Van Horn, Texas, and vicinity. The territory actually served is small and is devoted almost exclusively to cattle raising and dry farming. The town itself is little more than a trading post for ranchers in the area. Located approximately 30 miles from Sierra Blanca and 40 miles from the main El Paso electric system, the Van Horn system is isolated by desert and admittedly is at present not economically capable of interconnection with either Sierra Blanca or the main electric system. A local superintendent and staff, who occasionally are assisted by the production, distribution and engineering personnel of El Paso (Texas), operate the system, which generates its own energy from a diesel plant with a capacity of 357 kw.

Since, as respondents admit, Van Horn is neither interconnected nor at present economically capable of being interconnected with the El Paso properties, it cannot be a part of El Paso's integrated utility system. However, we find that the electric properties of Van Horn themselves constitute an integrated public utility system within the

terms of Section 2 (a) (29) (A) of the Act. We find, further, that this system may be retained by El Paso in addition to that company's electric system under the standards of Section 11 (b) (1). Although the record is not as clear as it might be on this point, it discloses that material savings are effected by the combination of El Paso and Van Horn. Substantial economies within the meaning of Clause (A) would be lost if the two systems were separated. Since Van Horn is located in the same state as El Paso it meets the standards of Clause (B) for retention as an additional system. And, in view of the small size of Van Horn and its close geographical proximity to El Paso's other properties, the combination also meets the standards of Clause (C).

5. *The Other Businesses of El Paso.*

This record contains no evidence from which we can conclude that El Paso's "other businesses" are reasonably incidental or economically necessary or appropriate to the operation of Gulf's electric system. Accordingly, in so far as they are sought to be related to Gulf's electric system, these businesses must be severed from Engineers' holding company system. However, as we indicated above, since these other businesses are conducted as part of the operations of the holding company system of El Paso (Delaware), which is itself a registered holding company and a respondent in this proceeding, it is appropriate to define the limits of these operations under the standards of Section 11 (b) (1) as applied to the El Paso (Delaware) holding company system. We have already noted that, in addition to the integrated electric utility system of El Paso (Texas), this holding company system may retain the integrated electric utility system at Van Horn, Texas. We now turn to the other businesses conducted by this system.

(a) The Transportation and Toll Bridge Businesses.

El Paso Electric Company (Texas) (hereinafter sometimes referred to as the Electric Company) owns and oper-

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ates a street railway and bus system in El Paso and vicinity and operates the street railway system owned by El Paso and Juarez Traction Company which serves Juarez, Mexico. In addition, these companies own two international toll bridges over the Rio Grande River between El Paso and Juarez; the American halves are owned by the Electric Company and the Mexican halves by El Paso and Juarez Traction Company. The Electric Company operates the railway and bridge properties owned by its associate, El Paso and Juarez Traction Company, under a contract dated January 3, 1911.

Owning 34 street cars which are operated on 3 railway lines over 18 miles of track, the Electric Company furnishes the rolling stock, men, and material for the operation of the street railway line and the toll bridges, and the necessary personnel and materials to keep all records and accounts for both. During the year 1940, the cars travelled 803,000 miles (including 97,000 on the El Paso and Juarez Traction Company properties) and carried 5,319,400 passengers (of which 1,242,400 were allocated to El Paso and Juarez Traction Company). The Electric Company also operated 47 buses on 9 bus lines solely in El Paso and vicinity over 33 miles of bus route. During the year 1940 the buses travelled 1,292,000 miles and carried 4,251,000 passengers.

Respondents claim that these transportation operations are reasonably incidental or economically necessary or appropriate to the operation of the Electric Company's utility system. The common origins and development of the electric and transportation properties, the joint use of certain personnel[55] and facilities, and the profitable character of the bus and railway operations do not, as we have already indicated, render the transportation business reasonably incidental or economically necessary or appropriate to the operations of the electric system, nor do they make retention of the transportation properties necessary or appropriate in the public interest or for the protection of investors or consumers. Indeed, the record shows that

[55] Most of this personnel engages in supervisory, clerical and administrative work.

most of these very factors have in the past been conducive to practices which were contrary to the interests of investors and consumers and detrimental to the proper functioning of the electric system. Thus, the fact that portions of the company's property, more properly allocable to railway operations, have been carried in the electric plant account, the fact that depreciation reserves have not been segregated between departments, and the fact that expenses have been improperly allocated between the two departments—e. g., the transportation department has been inadequately charged for the electricity furnished it by the electric department—have conflicted with the best interests of the electric investors and consumers.

Although the fact that free transportation is extended to certain electric system employees may be relevant in resolving the present question, it is not persuasive here because the record discloses that the portion of the transportation department's efforts devoted to this end is insignificant. While this service is of assistance in the operation of the electric system, its continuance or elimination would not affect the essentially independent character of the transportation operations. And, as the record all too clearly shows, no substantial relationship exists between the actual operations and problems of the two businesses.

Respondents claim that if the transportation properties are severed the electric business will sustain a loss because it will be required to absorb many expenses of joint facilities and employees now borne by the former. But the record does not support the loss claimed, particularly with respect to compensating electric employees for the loss of free transportation. And, in evaluating the asserted losses we must remember that the expanding electric operations will absorb a portion of the freed labor facilities. Moreover, the advantages of having the undivided attention of the company's executives devoted exclusively to electric operations must also be considered in appraising this claim. We believe that the public interest will be better served if the wholehearted attention of the personnel is devoted to the electric service, even though some losses may occur in initially adjusting to separate ownership.

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Accordingly, we cannot find that the transportation and toll bridge properties of El Paso (Texas) and El Paso and Juarez Traction Company are reasonably incidental or economically necessary or appropriate to the operation of El Paso's (Texas) electric utility systems, and we must order their divestment.

(b) The Electric Appliance Merchandising Business.

El Paso (Texas) is engaged in the electric appliance merchandising business in connection with the promotion of sales of electric energy in the territory served. Gross revenues from the sale and rental of electric appliances in 1940 were $330,140. On the company's books these operations returned a net income in 1940 of $5,460. However, if interdepartmental expenses were more properly allocated this business would have sustained a deficit of $3,323. Like the similar enterprises in the Virginia and Gulf systems, the record shows that these operations have resulted in some increase in the sale of electric energy and are not unrelated or economically inappropriate to the electric operations. We find, therefore, that this business is reasonably incidental to the conduct of El Paso's (Texas) electric system and is, therefore, retainable.[56]

C. *Conclusion.*

Engineers must divest itself of all interests, direct and indirect, in El Paso (Texas), El Paso (Delaware), El Paso and Juarez Traction Company, Baton Rouge Bus Company, and the gas utility system, the gas appliance merchandising business, the ice and water properties and the Alvin electric properties of Gulf. Moreover, of course, if Gulf is to be Engineers' principal system, Engineers must also divest itself of all interests, direct and indirect, in Virginia and Savannah.

[56] The evidence in this record will not, of course, sustain a finding that El Paso's non-utility businesses are reasonably incidental or economically necessary or appropriate to the operations of Gulf's electric utility system. Accordingly, since El Paso's electric system must be severed from common control with Gulf, these businesses will also have to be eliminated from Engineers' holding company system.

Under any circumstances El Paso Electric Company (Delaware) must divest itself of all interests, direct and indirect, in El Paso and Juarez Traction Company and the transportation and toll bridge properties of El Paso Electric Company (Texas).

III. Common Stock of El Paso Natural Gas Company.

Engineers owns and holds a block of 51,357 shares of the common stock of El Paso Natural Gas Company (hereinafter referred to as the "Natural Gas Company"), representing 8.5% of that company's outstanding voting securities. The Natural Gas Company is not a subsidiary of Engineers[57] but is an affiliate by virtue of Clauses (A) and (B) of Section 2 (a) (11) of the Act. The record before us does not disclose any further affiliations between the two companies.

Although there is some question as to whether the Natural Gas Company is a public utility company within the definition of Section 2 (a) (4) of the Act, as we view the case these securities cannot be retained by Engineers regardless of how that question is answered. If the Natural Gas Company is not a public utility these shares can only be retained on the theory that they are an interest in an "other business" which is reasonably incidental or economically necessary or appropriate to the operation of any of Engineers' retainable integrated utility systems. But the respondents have introduced no evidence addressed to the retainability of this interest as an "other business." Therefore, if the Natural Gas Company is a non-utility business we are unable, on the record before us, to find that Engineers' retention of an interest therein is reasonably incidental or economically necessary or appropriate to the operations of any retainable integrated utility system.

If, on the other hand, the Natural Gas Company is a public utility we must also conclude that divestment is nec-

[57] Section 2 (a) (8) of the Act. No proceeding has been instituted under paragraph (B) of that section to determine whether or not the Natural Gas Company should be subject to the obligations, duties and liabilities of a subsidiary of a registered holding company.

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essary. These securities, as we have indicated above, would then represent no more than an investment interest in a non-subsidiary. We doubt whether, particularly under the circumstances of this case, such an investment interest in a utility company may be retained as an additional integrated utility system. And, in any event, no evidence on this point was presented. Nor may these securities be retained as an interest in an "other business" which is reasonably incidental or economically appropriate to the operations of a retainable integrated utility system. As we have indicated above, there is no evidence in the record to show that retention of these securities would meet the standards of the "other business" clauses.[58]

It may also be noted that the argument of counsel in this case points to the conclusion that under no circumstances can an interest in a non-subsidiary utility be retained under the "other business" clauses. In discussing the relationship of the second "other business" clause to the first clause, Engineers' counsel, both in oral argument and in their brief, strenuously urged that "the second clause is explanatory of the first." We have indicated above[59] that we agree that the two clauses must be read together and that the factors listed in the second clause are to be examined in determining whether the interest sought to be retained is "reasonably incidental or economically necessary or appropriate to the operations" of retainable integrated systems. In this view of the matter, the parenthetical clause in the last sentence of Section 11 (b) (1)[60] would have to be considered in determining whether a business is reasonably incidental or economically

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[58] Under Section 11 (b) (1) it is, of course, incumbent upon the respondents to make out a case for the retainability of each of the systems and each of the other businesses which they may seek to retain. No additional system or investment interest is *prima facie* eligible for retention by a public utility holding company under Section 11 (b) (1). *Cf.* Sections 1 (c) and 11 (a).

[59] Pp. 6-8.

[60] The sentence provides:

"The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest *in any business (other than the business of a public-utility company as such)* . . ." (Italics supplied.)

appropriate. And that clause excludes from the category of reasonably incidental and economically appropriate "other businesses" an interest in the business of a public utility company as such. Accordingly, interests in non-subsidiary utilities could not be retained as "other businesses." We believe that this conclusion has much to support it and that it is strengthened by an examination of other provisions of the Act, particularly Section 10 (e) (2). Under that section Engineers could not acquire this interest in the Natural Gas Company (as an interest in a utility company) without an affirmative showing that such acquisition would serve the public interest by tending towards the economic or efficient development of an integrated public utility system. There is, however, no need to determine this question at this time since, even if the construction that non-subsidiary utilities might be retained as other businesses were adopted, respondents' failure to introduce any evidence on this point precludes the retention of these securities.[61]

IV. Engineers Public Service Company, Inc.—The Mutual Service Company.

Engineers Public Service Company, Inc. (hereinafter referred to as Engineers, Inc.), the mutual service company in Engineers' holding company system, has in the past rendered advisory and consultative services to all the companies in the system.

The service company has 20,000 shares of $5 par value capital stock outstanding. These shares are held by the subsidiaries in Engineers' system, substantially in the proportion that their annual gross revenues bear to the total annual gross revenues of the system companies serviced by Engineers, Inc. Although none of its shares are held di-

[61] In disposing of a petition for rehearing in the *United Gas Improvement* case, we pointed out that some question had been raised as to the soundness of the view, previously expressed in that case, that an investment interest in a utility is retainable where the standards of the "other business" clauses are satisfied. *The United Gas Improvement Company, et al.*, 11 S. E. C. ..... (1942), Holding Company Act Release No. 3511, at pp. 6-7, n. 13. However, there too we found it unnecessary to decide the point since, in any event, the record would not have permitted a finding that retention of the interest in question met the standards of the "other business" clauses.

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rectly by Engineers, it is, of course, indirectly a subsidiary of the holding company.

Respondents have stated that, if the system is reduced in its operations to the largest possible aggregation of properties permissible under the standards of Clause (B), it would not be practicable for the service company to continue to render the services which it has offered in the past. And in their testimony they have admitted that if Engineers were limited to the retention of only one company between Virginia and Gulf it would likewise not be practicable for the service company to continue to render services in the system. Moreover, in urging their case for the retention of additional systems under the standards of Clause (A), respondents have based their contentions on the assumption that the present service company would not continue to perform services for those companies in the system which Engineers might be permitted to retain. We agree with respondents that for the one electric utility system and its incidental businesses to which we have found that Engineers' holding company system must be reduced, it would be, to say the least, impractical to retain the present service company.[62] We, therefore, find that the retention of Engineers, Inc. is not reasonably incidental or economically necessary or appropriate to the operations of Engineers' holding company system as limited by our order. Accordingly, we must order the separation of this company from the Engineers' holding company system.

V. Summary of Conclusions.

Under the statute Engineers must limit its operations to the electric utility system, the electric appliance merchandising and jobbing business, and the ice business of Virginia. Engineers will, therefore, be ordered to sever its relationship with the companies, properties and businesses named hereafter, by disposing or causing the disposition, in any appropriate manner not in contravention of the

[62] Moreover, serious questions may arise under Sections 13 (b) and (d) if Engineers, Inc., which is presently equipped to perform services for the entire holding company system of Engineers, confines its activities to the performance of services for Engineers' one retainable system.

applicable provisions of the Act or the rules, regulations or orders promulgated thereunder, of its interest, direct and indirect (including the ownership, control or holding of securities), in Savannah, El Paso (Delaware), El Paso (Texas), El Paso and Juarez Traction Company, Baton Rouge Bus Company, El Paso Natural Gas Company, Engineers, Inc.; the gas utility system, the gas appliance merchandising and jobbing business and the transportation properties of Virginia; and the water business, the ice business, the gas utility system, and the gas appliance merchandising business of Gulf.

In addition, if Virginia's electric utility system is to be Engineers' principal system, Engineers will be ordered also to divest itself or cause the divestment in an appropriate manner of its interest, direct and indirect, in Gulf; and, if Gulf's electric utility system is to be Engineers' principal system, Engineers will be ordered to divest itself or cause the divestment in an appropriate manner of its interest, direct and indirect, in Virginia. Our order will require that Engineers divest itself of its interest in Gulf, but within fifteen days of the entry of our order Engineers may petition this Commission for leave to retain Gulf's electric utility system as its principal system.

El Paso (Delaware) must limit its operations to the electric utility systems of El Paso (Texas) in the Rio Grande River Valley and at Van Horn and to the electric appliance merchandising and jobbing business of El Paso (Texas). El Paso (Delaware) must therefore divest itself or cause the divestment, in any appropriate manner, of its interests, direct and indirect (including the ownership, control or holding of securities), in El Paso and Juarez Traction Company and the transportation and toll bridge properties of El Paso (Texas).

An appropriate order will issue.

By the Commission (Chairman Purcell, and Commissioners Healy, Pike and Burke), Commissioner O'Brien not participating.

ORVAL L. DUBOIS,
Secretary.

(SEAL)

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Appendix.

At the time of its registration, February 21, 1938, Engineers, which was incorporated in Delaware in 1925 and has had its principal offices in New York City, controlled gas and electric utility companies which served widely scattered sections of the country. Electric service was furnished by Virginia Electric and Power Company in Virginia and North Carolina; by Savannah Electric and Power Company in Georgia; by Gulf States Utilities Company in Louisiana and Texas; by El Paso Electric Company (Texas) and Mesilla Valley Electric Company in Texas and New Mexico; by The Western Public Service Company and its subsidiaries in Wyoming, South Dakota, Nebraska, Colorado, Kansas, Missouri, and Iowa; by Puget Sound Power & Light Company in Washington; and by The Key West Electric in Florida. None of the electric utility properties of any of these subsidiaries was interconnected or economically capable of interconnection with those of any other such company (with the minor exception of two small subsidiaries of The Western Public Service Company which had properties interconnected with those of their parent company). Gas service was rendered in Virginia, Louisiana, and Washington by the subsidiaries which rendered electric services in those states. The executive offices of Engineers, in New York City, were separated from the areas served by its electric and gas utility subsidiaries by distances ranging from 375 miles to 3,100 miles. The entire holding-company system used and bore the cost of service furnished by Engineers Public Service Company, Inc., a mutual service company organized and having its executive offices in New York.

In addition to these gas and electric facilities, the subsidiary companies in Engineers' system were engaged in various non-utility businesses and had interests in other businesses. Thus, they operated bus and street railway systems, toll bridges, ice and cold storage plants and various water, steam and telephone enterprises in fourteen states and in Canada. Moreover, many of these subsidi-

aries were engaged in the sale of electric and gas appliances in connection with their electric and gas businesses.

On February 28, 1940, we instituted this proceeding by order and notice [Holding Company Act Release No. 1945] under Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 to determine what action was necessary to limit the operations of the Engineers system to a single integrated public-utility system, to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; and to the control of such additional integrated public-utility systems as meet with the standards of Section 11 (b) (1).

Respondents filed an answer on April 5, 1940 and on May 23, 1940 they moved to dismiss the proceeding on the ground that no preliminary report of studies by the Commission under Section 11 (a) or Section 30 of the Act had been rendered to respondents in respect of their holding-company system. In that connection respondents contended, among other things, that our notice and order were improper because, in their failure to specify in what respects such system did not comply with the standards of Section 11 (b) (1), they did not tender specific issues for hearing and therefore cast an undue burden on the respondents. Construing the motion to dismiss as in effect a request for a statement setting forth our tentative views as to what action is necessary to bring about compliance by the respondents with Section 11 (b) (1) [*Engineers Public Service Company, et al.*, 7 S. E. C. 371 (1940)], we directed the Public Utilities Division to prepare a report of their studies of the Engineers system to aid us in arriving at tentative conclusions, and postponed the hearing herein pending the preparation of our statement and to afford the respondents sufficient time to prepare for hearing on the basis thereof.

Studies of the respondents' system having been made and reported to us by the Public Utilities Division, [See Report in this matter dated March 5, 1941, as corrected April 15, 1941, and released to the public] we issued a state-

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ment of our tentative conclusions on March 11, 1941 [*Statement of Tentative Conclusions of the Commission and Order Reconvening Hearing,* Holding Company Act Release No. 2607]. At the same time we ordered a hearing to be held before us on March 25 and directed the respondents to show cause why we should not forthwith issue an order requiring respondent, Engineers Public Service Company, "to divest itself of its interest in all subsidiaries, except: Virginia Electric and Power Company and Savannah Electric and Power Company; or, Gulf States Utilities Company, El Paso Electric Company (Delaware) and Baton Rouge Bus Company, Inc."

Hearings were held in accordance with that order and on July 23, 1941, we issued our Findings and Opinion and an order requiring Engineers to divest itself within one year of that date of its direct and indirect interest in securities of Puget Sound Power & Light Company and its subsidiaries and The Key West Electric Company. Moreover, although in our Findings and Opinion, that day issued, we found that it was also necessary for Engineers to divest itself of all its interest in The Western Public Service Company, a Maryland corporation, we held in abeyance our order to that effect for reasons therein stated [*Engineers Public Service Company, et al.,* 9 S. E. C. ....., Holding Company Act Release No. 2897, pp. 32-33]. In that Opinion, too, we disposed of respondents' contentions that evidence as to the constitutionality of Section 11 (b) (1) could be introduced and that that question be considered in this proceeding.

On July 31, 1941, we ordered the hearing reconvened for the taking of evidence on the other issues in the proceeding, which we had in a general way delineated in our Findings and Opinion of July 23 (p. 38).

Subsequently, The Western Public Service Company, a Maryland corporation, was dissolved and its Nebraska and South Dakota properties were sold. The residual properties of The Western Public Service Company, a Maryland corporation, are now owned by The Western Public Service Company, a Delaware corporation, The Northern Kansas

Power Company, and Missouri Service Company. All securities of these last three companies are owned directly by Engineers Public Service Company, and Engineers has consented to an order requiring that it divest itself of these securities within the time prescribed in Section 11 (c). [*The Western Public Service Company, et al.*, 11 S. E. C. ..... (1941), Holding Company Act Releases No. 3230, 3245]. Accordingly, as we have stated in the text, there remained for our decision at this time only the questions relating to the appropriateness of Engineers' retention of certain additional systems and incidental businesses in the event that it chooses as its principal system either Virginia or Gulf.

On October 14, 1941, in reply to respondents' request that a trial examiner's report be filed in this proceeding before we determine the remaining issues, we held that such a report is not necessary and we ordered that within thirty days after the closing of the record the Utilities Division was to file its request for specific findings of fact and a supporting brief and that within fifteen days thereafter the respondents were to file their requests for specific findings of fact and a supporting brief. [*Engineers Public Service Co., et al.*, 10 S. E. C. ..... (1941), Holding Company Act Release No. 3075]. These requests for findings and supporting briefs having been filed, oral argument was had before us.

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[Document No. 616—R. pp. 11388-11390]

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION.

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pennsylvania, on the 16th day of September, A. D., 1942.

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY and ITS SUBSIDIARY COMPANIES, Respondents.

File No. 59-4.

Public Utility Holding Company Act of 1935—Section 11 (b) (1).

Order Requiring Divestiture by Holding Companies and Subsidiaries in Holding Company System of Companies and Properties Owned or Operated Thereby.

The Commission having on February 28, 1940, by notice and order for hearing, instituted proceedings under Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 with respect to Engineers Public Service Company and its subsidiaries to determine their status under that Section, and Engineers Public Service Company and its subsidiaries having answered such notice and order; and

Hearings having been held after due notice, requests for findings of fact on behalf of such companies and briefs in support thereof having been filed, oral argument having been heard; and

The Commission being advised in the premises, and having this day issued its Findings and Opinion with respect to certain action which the Commission finds necessary to limit the operations of the holding company systems of Engineers Public Service Company and its subsidiaries, including each subsidiary thereof which is a registered

holding company and its subsidiaries, to a single integrated public utility system and additional systems and other businesses in accordance with the requirements of Section 11 (b) (1) of the Public Utility Holding Company Act of 1935;

IT IS ORDERED, pursuant to Section 11 (b) (1):

1. That Engineers Public Service Company, a registered public utility holding company, shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the said Act or the Rules, Regulations or Orders promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the following companies:

Savannah Electric and Power Company
Gulf States Utilities Company
Baton Rouge Bus Company, Inc.
El Paso Electric Company (Delaware)
El Paso Electric Company (Texas)
El Paso and Juarez Traction Company
El Paso Natural Gas Company
Engineers Public Service Company, Inc.; and

2. That the said Engineers Public Service Company shall cease to own or operate, directly or indirectly, any property or facilities now owned or operated by it through Virginia Electric and Power Company for the purpose of conducting, directly or indirectly, any gas utility, gas appliance merchandising and jobbing, and transportation business, and to cease engaging, directly or indirectly, in any gas utility, gas appliance merchandising and jobbing, and transportation business now engaged in by it, directly or indirectly, through the said Virginia Electric and Power Company; and

3. That El Paso Electric Company (Delaware), a registered public utility holding company, shall sever its relationship with El Paso and Juarez Traction Company by disposing or causing the disposition, in any appropriate

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manner not in contravention of the applicable provisions of the said Act or the Rules, Regulations or Orders promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued and properties owned, controlled or operated by the said El Paso and Juarez Traction Company; and

4. That the said El Paso Electric Company (Delaware) shall cease to own or operate, directly or indirectly, any property or facilities now owned or operated by it through El Paso Electric Company (Texas) for the purpose of conducting, directly or indirectly, any transportation or toll bridge business, and to cease engaging, directly or indirectly, in any transportation and toll bridge business now engaged in by it, directly or indirectly, through the said El Paso Electric Company (Texas); and

Engineers Public Service Company, a registered public utility holding company, controlling more than one single integrated public utility system, although heretofore afforded opportunity to indicate its choice of the single integrated system it desires to retain as its principal system, having failed to avail itself of such opportunity, and the Commission desiring nevertheless that further opportunity be afforded said respondent to indicate its views with respect to its choice of the principal system;

IT IS FURTHER ORDERED that notwithstanding the provisions of Rule XII (d) of the Commission's Rules of Practice Engineers Public Service Company may, within fifteen days of the date hereof, petition for leave to retain as its principal system the electric utility system of Gulf States Utilities Company;

Provided, however, that the Commission reserves the right to grant, deny, or dispose of any such petition according to the merits of the grounds urged in support thereof, and to take such other action with respect thereto as may appear to the Commission to be appropriate.

Issue having arisen in this proceeding as to the permissibility of retention of the Gulf States Utilities Company's electric utility properties located in Jasper, Texas; and

The Commission deeming it necessary and appropriate that the record be reopened and that additional opportunity be afforded for the presentation of further relevant evidence bearing on such questions;

IT IS ORDERED that, at such hour and place and before such trial examiner as the Commission shall by further notice and order designate, additional opportunity shall be afforded upon application by Gulf States Utilities Company or Engineers Public Service Company for the presentation of further relevant evidence bearing upon the question whether the said electric utility properties located in Jasper, Texas, may be retained under Clauses (A) and (C) of Section 11 (b) (1) of the Act as systems additional to the integrated electric utility system of Gulf States Utilities Company.

IT IS PROVIDED, with respect to our Findings, Opinion and Order herein, in their entirety, and with respect to the entry, publication, and service thereof that they shall be without prejudice to the right of the Commission to enter such other and further appropriate orders from time to time as the Commission may deem necessary to secure compliance by the respondents with the provisions of the Act and the pertinent Rules and Regulations thereunder, the Findings and Opinion in this proceeding, and the provisions of this Order; and

IT IS FURTHER PROVIDED that jurisdiction is reserved to the Commission, notwithstanding this Order, or its entry, publication, and service, to conduct such investigations, hearings, or other proceedings involving any or all of the respondents herein and to make such orders as it shall deem necessary or appropriate under Section 11 (b) (2) or any other provision of the Public Utility Holding Company Act of 1935.

By the Commission.

ORVAL L. DUBOIS,
Secretary.

(SEAL)

[Document No. 618—R. pp. 11410-11411]

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Philadelphia, Pennsylvania, on the 6th day of October, A. D., 1942.

IN THE MATTER
of
ENGINEERS PUBLIC SERVICE COMPANY
AND ITS SUBSIDIARY COMPANIES,
Respondents,

Memorandum Opinion and Order.

File No. 59-4.

Public Utility Holding Company Act of 1935—Section 11 (b) (1)

Engineers Public Service Company and its subsidiary companies, respondents herein, have filed a petition for rehearing on our order dated September 16, 1942, wherein we directed Engineers Public Service Company and El Paso Electric Company, an intermediate holding company under Engineers and itself a registered holding company, to sever their relationships with certain companies and businesses. The petition also requests leave to adduce additional evidence and a stay of our order.

(1) As a petition for rehearing, the petition raises no new issues and presents no new arguments which were not presented to us in the course of the hearing, in the briefs and in oral argument.

(2) The additional evidence sought to be adduced falls into two parts:

a. A volume marked "Respondent's Proffer of Constitutional Evidence", consisting of a transcript of testimony

proposed to be given by M. H. Waterman and exhibits compiled at his direction, and proffered for the purpose of establishing the unconstitutionality of Section 11 (b) (1) as applied to the respondents. In our previous opinion of July 23, 1941 (9 S. E. C. ....., Holding Company Act Release No. 2897), we held that this evidence was inadmissible, but that, if the respondents desired to make a more complete proffer of the evidence to save their rights for the purposes of judicial review, we had no objection to their doing so. Thereafter, respondents offered the volume in evidence, and, pursuant to our previous direction, the trial examiner excluded it. The petition advances no new reasons why this evidence should be admitted, and we adhere to our previous ruling.

b. Evidence relating to the application of Clauses (A), (B) and (C) of Section 11 (b) (1) of the Act to the retention of the utility systems of Gulf States Utilities Company and/or El Paso Electric Company as additional systems to the electric utility system of Virginia Electric and Power Company as the principal system. As grounds for failure to adduce the evidence referred to, respondents state—

> "that the Commission, by its Findings and Opinion and Order of July 23, 1941, herein erroneously made as the law of this case an interpretation of subdivision (B) of Section 11 (b) (1) of the Act which prevented and precluded the petitioners from offering or proffering earlier any such evidence."

This argument appears to be directed to a failure to adduce evidence under the (A) and (C) standards rather than under the (B) standard, as to which full argument and briefs were submitted in the record on which our findings, opinion and order of July 23 were based. Our interpretation of Clause (B) was arrived at upon these briefs and argument of counsel, and after careful study on our part. We adhere to that interpretation. Since Clauses (A), (B) and (C) are set forth in the statute in the conjunctive, it would be necessary to find that the standards of all three

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clauses are met if Engineers were to be permitted to keep the combination of systems here referred to. Our finding that the combination was barred by Clause (B) rendered evidence addressed to the (A) and (C) standards irrelevant, and the hearings will therefore not be reopened for its admission.

(3) The petition prays for a stay of our order of September 16, 1942, during the pendency of the petition and until the closing of the record after the reception of the requested evidence. Since we have concluded that no rehearing or reopening of the hearing is to be granted, no valid grounds exist for such a stay.

In view of respondents' assertion, however, that they were aggrieved by the provision of our order of September 16 allowing Engineers fifteen days in which to petition for leave to retain the electric utility system of Gulf States Utilities Company as its principal system, we shall modify the order to the extent of permitting the fifteen-day period to run from the date of this opinion and order. In other respects,—as a petition for rehearing, for leave to adduce additional evidence, and for a stay of our order—the petition will be denied, and it is so ordered.

By the Commission (Chairman Purcell and Commissioners Healy, Pike, Burke, and O'Brien).

ORVAL L. DUBOIS,
Secretary.

(SEAL)

[Document No. 562—R. pp. 10239-10251]

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission held at its office in the City of Washington, D. C., on the 28th day of February, A. D., 1940.

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES,
Respondents,

File No. 59-4.

Notice of and Order for Hearing Pursuant to Section 11(b) (1) of the Public Utility Holding Company Act of 1935.

The Commission having examined pursuant to Sections 11 (a), 18 (a) and 18 (b) of the Public Utility Holding Company Act of 1935, the corporate structure of Engineers Public Service Company, a registered holding company, and its subsidiary companies, the relationships among the companies in the holding company system of said Engineers Public Service Company, the character of the interests thereof and the properties owned or controlled thereby, and it appearing to the Commission from such examination that:

I.

1. Engineers Public Service Company, a registered holding company, is a corporation organized under the laws of Delaware and maintains principal offices for the doing of business in the City of New York, State of New York. The following are subsidiary companies of Engineers Public Service Company and are also registered holding companies within the meaning of the Public Utility Holding Company Act of 1935;

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Name	State of Organization
El Paso Electric Company	Delaware
Western Public Service Company, The	Maryland

2. The following are subsidiary companies of Engineers Public Service Company or of Engineers Public Service Company and of one of the companies named in paragraph 1 above and are public utility companies within the meaning of the Public Utility Holding Company Act of 1935 (hereinafter sometimes referred to as the Act);

Name	State of Organization	Nature of Business
El Paso Electric Company	Texas	Electric, St. Railway, and Toll Bridge
Gulf States Utilities Company	Texas	Electric, Gas, Steam, Ice and Water
Key West Electric Company, The	New Jersey	Electric
Mesilla Valley Electric Company	New Mexico	Electric
Missouri Service Company	Missouri	Electric, Ice and Water
Northern Kansas Power Company, The	Kansas	Electric
Puget Sound Power & Light Company	Massachusetts	Electric, Gas, Telephone, Steam and Water
Savannah Electric and Power Company	Georgia	Electric, St. Railway and Bus
Virginia Electric and Power Company	Virginia	Electric, Gas, St. Railway and Bus
Western Public Service Company, The	Maryland	Electric, Ice and Steam Heating

3. The following are subsidiary companies of Engineers Public Service Company or of Engineers Public Service Company and one of the companies named in paragraph 1 above and are not public utility companies within the meaning of said Act but are engaged in the businesses respectively set forth opposite their names:

Name	State of Organization	Nature of Business
Baton Rouge Bus Company, Inc.	Louisiana	Bus
Diamond Ice & Storage Company	Washington	Ice and Cold Storage
El Paso and Juarez Traction Company	Texas	Street Railway and Toll Bridge
Ice Delivery Co., The	Washington	Ice Delivery
Independent Stages, Inc.	Nevada	Bus
North Coast Transportation Company	Washington	Bus
Wallace Falls Power Company	Nevada	Owner of Undeveloped Power Site
Washington Electric Company	Maine	Owner of Land and Water Rights

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4. The following is a mutual service company as defined in the Act in the holding company system of Engineers Public Service Company and is engaged in the business set forth opposite its name:

Name	State of Organization	Nature of Business
Engineers Public Service Company, Inc.	New York	Service Company

5. As of December 31, 1938 the holding company system of Engineers Public Service Company served with electricity communities having an aggregate population of 2,328,500, located in the states of:

Colorado
Florida
Georgia
Iowa
Kansas
Louisiana
Missouri
Nebraska
New Mexico
North Carolina
South Dakota
Texas
Virginia
Washington
Wyoming

and also in Mexico; the electric service areas of said holding company system are shown on the annexed map marked Exhibit "1" which is made a part hereof as if set out here in full. As of December 31, 1938, said holding company system served with gas, communities having an aggregate population of 254,000 located in the states of:

Louisiana
Virginia
Washington

The communities served with gas by said holding company system are shown on the annexed map marked Exhibit "2" and made a part hereof as if set out herein in full. Said holding company system through the medium of its various subsidiaries is also engaged in various other businesses as set forth elsewhere herein.

The location of the operations of the public utility subsidiary companies named in paragraph 2 of Section I above

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and the respective mileage distances from the principal offices for the doing of business of Engineers Public Service Company are shown on the annexed chart marked Exhibit "3" which is made a part hereof as if set out herein in full.

II.

6. El Paso Electric Company, the Texas Corporation, referred to in paragraph 2 above, a subsidiary company of Engineers Public Service Company and of El Paso Electric Company, the Delaware Corporation, referred to in paragraph 1 above, owns and operates in the State of Texas facilities for the generation, transmission and distribution of electric energy for sale, owns and operates in the State of New Mexico facilities for the generation and distribution of electric energy for sale and is an electric utility company as defined in the Act. It also owns and operates facilities for the rendering of street railway and bus transportation service in the State of Texas. Under a contract with its associate company, El Paso and Juarez Traction Company, it operates the street railway system in Juarez, Mexico and across the bridges between El Paso and Juarez, providing and owning the rolling stock used thereon. It owns a half interest in the two bridges above referred to, El Paso and Juarez Traction Company owning the other half interest. Under its contract with the El Paso and Juarez Traction Company it operates the toll bridges.

7. Gulf States Utilities Company, referred to in paragraph 2 above, a subsidiary company of Engineers Public Service Company, owns and operates in the States of Texas and Louisiana facilities for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. Said Gulf States Utilities Company also owns and operates in the State of Louisiana facilities for the sale at retail of natural gas and is a gas utility company as defined in the Act. In the State of Texas said Gulf States Utilities Company also owns and

operates facilities for the sale and distribution of ice and water. In the State of Louisiana said company also owns and operates facilities for the sale and distribution of steam, water and ice.

8. The Key West Electric Company, referred to in paragraph 2 above, a subsidiary company of Engineers Public Service Company, owns and operates in the State of Florida facilities for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act.

9. Mesilla Valley Electric Company, referred to in paragraph 2 above, a subsidiary company of Engineers Public Service Company and of El Paso Electric Company, a Delaware corporation, referred to in paragraph 1 above, owns and operates facilities for the generation, transmission of electric energy for sale in the State of New Mexico and is an electric utility company as defined in the Act.

10. Missouri Service Company, referred to in paragraph 2 above, a subsidiary company of Engineers Public Service Company and of The Western Public Service Company, referred to in paragraph 1 above, owns and operates in the State of Missouri facilities for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. It also owns and operates facilities for the distribution of electric energy for sale in the State of Iowa. It also owns and operates facilities for the manufacture, sale and distribution of ice and for the sale and distribution of water in the State of Missouri.

11. The Northern Kansas Power Company, referred to in paragraph 2 above, a subsidiary of Engineers Public Service Company and of The Western Public Service Company, referred to in paragraph 1 above, owns and operates in the State of Kansas facilities for the distribution of electric energy for sale and is an electric utility company as defined in the Act.

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12. Puget Sound Power & Light Company, referred to in paragraph 2 above, a subsidiary company of Engineers Public Service Company, owns and operates facilities for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. Said Puget Sound Power & Light Company also owns and operates in the said State of Washington facilities for the distribution at retail of manufactured gas and is a gas utility company as defined in the Act. Said company also owns and operates in said State facilities for engaging in the telephone business and for the sale and distribution of steam and water.

13. Savannah Electric and Power Company, referred to in paragraph 2 above, a subsidiary of Engineers Public Service Company, owns and operates in the State of Georgia facilities for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. Said Savannah Electric and Power Company also owns and operates in said State facilities for the rendering of street railway and bus transportation service.

14. Virginia Electric and Power Company, referred to in paragraph 2 above, owns and operates in the States of Virginia and North Carolina facilities for the generation, transmission and distribution of electric energy for sale and is an electric utility company as defined in the Act. Said Virginia Electric and Power Company also owns and operates in the State of Virginia facilities for the distribution at retail of manufactured gas. Said Virginia Electric and Power Company also owns and operates in the State of Virginia facilities for the rendering of street railway and bus transportation service.

15. The Western Public Service Company, a subsidiary company of Engineers Public Service Company, referred to in paragraphs 1 and 2 above, owns and operates in the States of Nebraska, South Dakota, Wyoming and Colorado

facilities for the generation, transmission and distribution of electric energy for sale, with the exception that said company owns only distribution facilities in the State of South Dakota, and said company is an electric utility company as defined in the Act. The Western Public Service Company also owns and operates in the State of Nebraska facilities for engaging in the steam heating business and for the manufacture, sale and distribution of ice.

III.

16. Baton Rouge Bus Company, Inc., referred to in paragraph 3 above, a subsidiary company of Engineers Public Service Company, owns and operates facilities for the rendering of bus transportation service in and about the City of Baton Rouge, Louisiana.

17. Diamond Ice & Storage Company, referred to in paragraph 3 above, a subsidiary company of Engineers Public Service Company and of Puget Sound Power & Light Company, referred to in paragraph 2 above, owns and operates facilities for the manufacture, sale and distribution of ice and for the furnishing of cold storage service in Seattle, Washington.

18. El Paso and Juarez Traction Company, referred to in paragraph 3 above, a subsidiary of Engineers Public Service Company and of El Paso Electric Company, the Delaware corporation, referred to in paragraph 1 above, owns a street railway in Juarez, Mexico and also owns a half interest in the toll bridges between El Paso, Texas, and Juarez and in the street railways across these bridges.

19. The Ice Delivery Company, a subsidiary company of Engineers Public Service Company, of Puget Sound Power & Light Company, referred to in paragraph 2 above, and of Diamond Ice & Storage Company, referred to in paragraph 3 above, owns and operates facilities for the delivery of ice in Seattle, Washington.

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20. Independent Stages, Inc., referred to in paragraph 3 above, a subsidiary company of Engineers Public Service Company, of Puget Sound Power & Light Company, referred to in paragraph 2 above, and of North Coast Transportation Company, referred to in paragraph 3 above, owns bus transportation facilities which it operates in conjunction with its associate, North Coast Transportation Company.

21. North Coast Transportation Company, referred to in paragraph 3 above, a subsidiary company of Engineers Public Service Company and of Puget Sound Power & Light Company, referred to in paragraph 2 above, in conjunction with its subsidiary, Independent Stages, Inc., owns and operates facilities for bus transportation in the States of Washington and Oregon and in British Columbia, Canada. It also owns and operates terminal buildings in Everett, Seattle and Olympia, Washington.

22. Wallace Falls Power Company, referred to in paragraph 3 above, a subsidiary of Engineers Public Service Company, of Puget Sound Power & Light Company, referred to in paragraph 2 above, and of Washington Electric Company, referred to in paragraph 3 above, is the owner of a power site not yet developed in the State of Washington.

23. Washington Electric Company, referred to in paragraph 3 above, a subsidiary company of Engineers Public Service Company and of Puget Sound Power & Light Company, referred to in paragraph 2 above, owns and holds land and water rights in the State of Washington.

IV.

24. Engineers Public Service Company, Inc., referred to in paragraph 4 above, a subsidiary company of Engineers Public Service Company, is a corporation organized under the laws of the State of New York. It functions as a mutual service company for the members of the Engi-

neers Public Service Company holding-company system and renders executive, purchasing, insurance, new business, statistical, financing and corporate services.

V.

And it appearing further to the Commission from such examination that:

25. The holding-company system of said Engineers Public Service Company is not confined in its operations to those of a single integrated public-utility system within the meaning of the Act, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system;

VI.

WHEREFORE IT IS ORDERED that the said Engineers Public Service Company and each of its subsidiary companies hereinbefore named, all of which are made respondents herein, file with the Secretary of the Commission on or before the 6th day of April, 1940, their joint or several answers admitting, denying, or otherwise explaining their respective positions as to each of the allegations of Parts I to V hereof inclusive. Any such answer may include a statement of the claim of the respondents or any of them as to (a) the action, if any, which is necessary and should be required to be taken by any of the respondents (including the divestment of control, securities or other assets), to limit the operations of each of the registered holding companies hereinbefore named to a single integrated public-utility system and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (b) the extent to which any of said respondents which is a registered holding company should be permitted to continue to control one or more additional integrated public-utility systems as may meet the requirements of Clauses (A), (B) and (C) of Section 11(b)(1) of the Act; and (c) the extent to which any of said respondents should be permitted to

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retain an interest in any business (other than the business of a public-utility company as such) as provided by Section 11(b)(1) of the Act. The answer of any respondent which is a registered holding company may, if such respondent so desires, state that such respondent proposes and is prepared to take such action as will cause it to cease to be a holding company within the meaning of the Act, together with a description of such action and the time within which it proposes to take such action; and

It Is Further Ordered pursuant to Section 11(b)(1) of the said Public Utility Holding Company Act of 1935 that a hearing be held at the offices of the Securities and Exchange Commission, 1778 Pennsylvania Avenue, N. W., Washington, D. C., at 10 A. M. on the twentieth day after the date herein fixed for the filing of answers (or such later date as the Commission may prior thereto fix by supplementary notice) to determine (1) such issues, if any, as may arise from the allegations of Parts I to V hereof, inclusive, and the answer or answers filed thereto by the respondents herein or any of them as hereinabove provided and by any other party or parties hereto as hereinafter provided; (2) what action, if any, is necessary and shall be required to be taken by the respondents herein, or any of them, to limit the operations of the holding company systems of each of the registered holding companies hereinbefore named to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (3) pursuant to such application as may be made herein, the extent to which each of the registered holding companies hereinbefore named shall be permitted to continue to control one or more additional integrated public-utility systems as provided by Section 11(b)(1) of the Act; and (4) pursuant to such application as may be made herein the extent to which any of the respondents will be permitted to retain any interest in any business (other than that of a public-utility company as such) as provided by Section 11(b)(1) of the Act; and

IT IS FURTHER ORDERED that the Secretary of the Commission shall serve notice of the hearing aforesaid by mailing a copy of this order by registered mail to said Engineers Public Service Company and to each of its subsidiary companies aforementioned, respondents herein, such mailing to be made not less than thirty days prior to the date hereinbefore fixed for the filing of answers; and that notice is hereby given of said hearing to all other persons, including the security holders and consumers of the said respondents, all States, municipalities and political subdivisions of States within which are located any of the aforesaid utility assets or under the laws of which any of the respondents are incorporated, all State commissions, State securities commissions and all agencies, authorities or instrumentalities of one or more States, municipalities or other political subdivisions having jurisdiction over any of the respondents or over any of the businesses, affairs or operations of any of them, and that such notice shall be given further by general release of the Commission, distributed to the press and mailed to the mailing list for releases issued under the Public Utility Holding Company Act of 1935. Further notice shall be given to all persons by publication in the Federal Register, not later than thirty days prior to the date hereinbefore fixed for the filing of answers, of a notice as follows:

NOTICE OF HEARING UNDER SECTION 11(B) OF THE PUBLIC UTILITY HOLDING COMPANY ACT OF 1935 WITH RESPECT TO THE HOLDING-COMPANY SYSTEM OF ENGINEERS PUBLIC SERVICE COMPANY.

Notice is hereby given that the Securities and Exchange Commission adopted an order on the 28th day of February, 1940 directing that a hearing pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 be held with respect of Engineers Public Service Company and each of its subsidiary companies hereinafter called the respondents at the offices of the said Securities and Exchange Commission, 1778 Pennsylvania Avenue, N.W., Washington, D. C., at 10 A. M. on the twentieth day after the date herein fixed

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for the filing of answers (or such later date as the Commission may prior thereto fix by supplementary notice).

Said order recites that it appears to the Commission that the holding-company system of the said Engineers Public Service Company is not confined in its operations to those of a single integrated public-utility system within the meaning of the said Act, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system.

Said order provides that each respondent shall file its answer to the allegations of said order on or before the 6th day of April, 1940, and thereby shall admit, deny, or otherwise explain the position of such respondent with respect to the allegations set forth in Parts I to V of said notice and order for hearing, and also provides that such answer may include a statement of the claim of the respondents or any of them as to (a) the action, if any, which is necessary and should be required to be taken by any of the respondents (including the divestment of control, securities or other assets), to limit the operations of each of the respondents as may be a registered holding company to a single integrated public-utility system and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (b) the extent to which any of said respondents which is a registered holding company should be permitted to continue to control one or more additional integrated public-utility systems as may meet the requirements of Clauses (A), (B) and (C) of Section 11 (b) (1) of the Act; and (c) of the extent to which any of said respondents should be permitted to retain an interest in any business (other than the business of a public-utility company as such) as provided by Section 11 (b) (1) of the Act. The answer of any respondent which is a registered holding company may, if such respondent so desires, state that such respondent proposes and is prepared to take such

action as will cause it to cease to be a holding company within the meaning of the Act, together with a description of such action and the time within which it proposes to take such action; and

Said order further provides that the purpose of such hearing is to determine (1) such issues, if any, as may arise from the allegations of Parts I to V, inclusive, of said order, and the answer or answers filed thereto by the respondents or any of them as hereinbefore provided, and by any other party or parties hereto as hereinafter provided; (2) what action, if any, is necessary and shall be required to be taken by the respondents in said proceeding, or any of them, to limit the operations of the holding company systems of each of the respondents as may be a registered holding company to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system; (3) pursuant to such application as may be made in said proceedings, the extent to which each of the respondents as may be a registered holding company shall be permitted to continue to control one or more additional integrated public-utility systems as provided by Section 11 (b) (1) of the Act; and (4) pursuant to such application as may be made in said proceedings the extent to which any of the respondents will be permitted to retain any interest in any business (other than that of a public-utility company as such) as provided by Section 11 (b) (1) of the Act; and

Reference is made to said notice and order for hearing for a more complete statement of the various matters to be determined at said hearing, and a copy of said notice and order for hearing is on file and open to public inspection at the offices of said Securities and Exchange Commission in Washington, D. C., and in each of the Regional Offices of said Securities and Exchange Commission, and a copy of said notice and

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order for hearing may be had upon written request to the Secretary of said Commission, and said notice and order for hearing is hereby made a part of this notice as if more fully herein set forth at length.

Notice of the aforesaid hearing is particularly given to each of the aforesaid respondents, Engineers Public Service Company, Baton Rouge Bus Company, Inc., Diamond Ice & Storage Company, El Paso Electric Company, a Delaware corporation, El Paso Electric Company, a Texas corporation, El Paso and Juarez Traction Company, Gulf States Utilities Company, The Ice Delivery Company, Independent Stages, Inc., The Key West Electric Company, Mesilla Valley Electric Company, Missouri Service Company, North Coast Transportation Company, The Northern Kansas Power Company, Puget Sound Power & Light Company, Savannah Electric and Power Company, Virginia Electric and Power Company, Wallace Falls Power Company, Washington Electric Company, The Western Public Service Company, and Engineers Public Service Company, Inc. and to all other persons, including the security holders and consumers of the said respondents, all States, municipalities, and political subdivisions of States within which are located any of the utility assets owned or operated by any of said respondents or under the laws of which any of the respondents are incorporated, all State commissions, State securities commissions and all agencies, authorities or instrumentalities of one or more States, municipalities or other political subdivisions having jurisdiction over any of the respondents or over any of the businesses, affairs or operations of any of them.

Said order further provides that any person proposing to intervene in said proceedings shall file with the Secretary of the Securities and Exchange Commission on or before the 6th day of April, 1940, his request or application therefor as provided by Rule XVII of the Rules of Practice of the said Securities and Exchange Commission, and may, together with such re-

quest or application, file a proposed answer in form and content as hereinbefore provided, and which answer shall be deemed effectively filed upon the entry of an order by the Commission granting such request or application.

By order of the Securities and Exchange Commission this 28th day of February, 1940.

Francis P. Brassor,
Secretary.

(Seal)

It is further ordered that any person proposing to intervene in these proceedings shall file with the Secretary of the Commission on or before the 6th day of April, 1940, his request or application therefor as provided by Rule XVII of the Rules of Practice, and may, together with such request or application, file a proposed answer in form and content as hereinabove provided, which said answer shall be deemed effectively filed upon the entry of an order by the Commission granting such request or application.

By the Commission.

Francis P. Brassor,
Secretary.

(Seal)

Exhibits 1, 2 and 3.

(Not here printed as they appear at pages 292, 293 and 294, respectively, of this Appendix.)

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[Document No. 576—R. pp. 10379-10409]

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY
AND ITS SUBSIDIARY COMPANIES,
Respondents.

File Number 59-4.

Motion to Dismiss the Proceeding.

ENGINEERS PUBLIC SERVICE COMPANY and its subsidiary companies, respondents, by Mudge, Stern, Williams & Tucker and Hunton, Williams, Anderson, Gay & Moore, their attorneys, hereby move to dismiss the above-entitled proceeding and in support of said motion respectfully show:

1. On or about April 6, 1940, respondents filed their answer to the notice of and order for hearing dated February 28, 1940 in the above-entitled matter (herein usually referred to as the "Notice and Order"). The first hearing herein is now set for May 27, 1940.

2. By Section 30 of the Public Utility Holding Company Act of 1935 (herein usually referred to as the "Act") the Securities and Exchange Commission (herein usually referred to as the "Commission") is authorized and directed to make studies and investigations of public-utility companies, the territories served or which can be served by public-utility companies, and the manner in which the same are or can be served, to determine the sizes, types, and locations of public-utility companies which do or can operate most economically and efficiently in the public interest, in the interest of investors and consumers, and in further-

ance of a wider and more economical use of gas and electric energy; and upon the basis of such investigations and studies the Commission is directed to make public from time to time its recommendations as to the type and size of geographically and economically integrated public-utility systems which, having regard for the nature and character of the localities served, can best promote and harmonize the interests of the public, the investor, and the consumer. On information and belief, respondents allege that the Commission has never made the studies and investigations authorized and directed by Section 30 of the Act. The Commission has never furnished respondents, or any of them, nor has it ever made public, its recommendations as authorized and directed by said Section 30.

3. Compliance by the Commission with the duties imposed upon it by Section 30 of the Act as aforesaid is a condition precedent to a proceeding by the Commission against the respondents, or any of them, under Section 11 (b) (1) of the Act; and the prosecution of such a proceeding against the respondents, or any of them, prior to performance of such condition precedent would be premature and in violation of the Act and would constitute a denial of due process of law in violation of the Fifth Amendment to the Federal Constitution.

4. By Section 11 (a) of the Act it is made the duty of the Commission to examine the corporate structure of every registered holding company and subsidiary company thereof, the relationships among the companies in the holding-company system of every such company and the character of the interests thereof and the properties owned or controlled thereby to determine the extent to which the corporate structure of such holding-company system and the companies therein may be simplified, unnecessary complexities therein eliminated, voting power fairly and equitably distributed among the holders of securities thereof, and the properties and business thereof confined to those necessary or appropriate to the operations of an integrated public-utility system. The recitals preceding

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paragraph "1" of the Notice and Order would seem to indicate that the Commission has made an examination of the respondents pursuant to Section 11 (a) of the Act, but the respondents are without knowledge as to whether or not such an examination has been made. If such an examination has been made by the Commission, it was made without any notice to the respondents, or any of them, and none of them was accorded an opportunity to be heard upon or in connection therewith. None of the respondents has been advised as to what determination the Commission has made, if any, as the result of any examination by the Commission pursuant to Section 11 (a) of the Act. Any determination made by the Commission in respect of the respondents, or any of them, under Section 11 (a) of the Act, without notice to the respondents and opportunity for hearing, would be wholly ex parte and in violation of the Act and consequently void.

5. The Notice and Order fails to disclose the Commission's determination as to the extent to which the properties and business of the respondents may be confined to those necessary or appropriate to the operations of an integrated public-utility system; nor does it specify which part, if any, of the holding-company system of Engineers Public Service Company appears to the Commission to be "not confined in its operations to those of a single integrated public-utility system within the meaning of the Act", as alleged in paragraph 25 of the Notice and Order, or which other business or businesses thereof, if any, appear to the Commission to be not "reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system", as alleged in paragraph 25 of the Notice and Order. Respondents are not advised by the Notice and Order, and have not been otherwise advised by the Commission, with respect to the contentions of the Commission in this proceeding or with respect to the parts of their respective systems or businesses to which the contentions of the Commission are directed in this proceeding.

6. An examination of respondents by the Commission under Section 11 (a) of the Act, and a determination by the Commission as required thereby, upon notice to the respondents and an opportunity for hearing, are conditions precedent to a proceeding by the Commission under Section 11 (b) (1) of the Act; and the prosecution of such a proceeding prior to the performance of such conditions precedent would be premature and in violation of the Act and would constitute a denial to the respondents of due process of law in violation of the Fifth Amendment to the Federal Constitution.

7. The hearing herein, now set for May 27th, will not constitute a hearing as described in the title of this proceeding for the reason that the notice and opportunity for hearing which is specifically reserved by the Act to the respondents was intended to be made available subsequent, and not prior, to the receipt of advice from the Commission as to its determination under Section 11 (a) of the Act and to the receipt and advice from the Commission as to what action, if any, under Section 11 (b) (1) of the Act, the Commission "shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system." The Notice and Order do not tender any issue in respect of Section 11 (b) (1) of the Act to which a pleading by the respondents herein is or can properly be required.

8. Section 11 (b) (1) of the Act sets forth the conditions under which, after notice and opportunity for hearing, the Commission is required to permit a registered holding company to continue to control a single integrated public-utility system and one or more additional integrated public-utility systems. The Notice and Order provides *inter alia* that a hearing be held to determine, "pursuant to such application as may be made herein" the extent to which such

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of the respondents as are registered holding companies shall be permitted to continue to control one or more additional integrated public-utility systems as provided by Section 11 (b) (1) of the Act. By the terms of the Notice and Order, the Commission has attempted to shift to the respondents a burden which properly rests on the Commission.

9. The Rules of Practice of the Commission prevent any fair or proper opportunity for notice and hearing herein and constitute a deprivation of respondents' property without due process of law. By paragraph (b) of Rule IX of said Rules of Practice, it is provided that no trial examiner's report is to be made and served in proceedings under the Public Utility Holding Company Act of 1935. Paragraph (e) of said Rule IX provides that within five days after receipt or filing of a copy of the transcript of the testimony any party or counsel to the Commission *may* submit a request for specific findings which may be accompanied by a brief in support thereof. Said Rules of Practice do not, however, *require* a party or counsel to the Commission to submit a request for specific findings. Paragraph (a) of Rule XI of said Rules requires any brief in support of a request for such specific findings to be filed within fifteen days after the filing or service of such request. The Rules of Practice thus contemplate that respondents' position and contentions shall be ultimately formulated and finally submitted within a wholly inadequate time and without any prior notice of the Commission's contentions or of the specific issues to be met and determined herein, thus effectively foreclosing any possibility of fair and adequate notice or hearing herein. The Notice and Order, therefore, is not an adequate or effective notice under said Act or under the due process clause of the Fifth Amendment to the Federal Constitution, and imposes no duty on respondents to proceed thereunder.

WHEREFORE, respondents respectfully move the Commission that it withdraw the Notice and Order, or enter an

order dismissing this proceeding, and grant to the respondents such other and further relief in the premises as may be just and proper.

Dated: May 23, 1940.

MUDGE, STERN, WILLIAMS & TUCKER,

By WILLIAM E. TUCKER,
A member of said firm,
Office and Post Office Address:
No. 20 Pine Street,
New York, N. Y.

HUNTON, WILLIAMS, ANDERSON, GAY & MOORE,

By T. JUSTIN MOORE,
A member of said firm,
Office and Post Office Address,
Electric Building,
7th and Franklin Streets,
Richmond, Virginia.

Attorneys for Engineers Public Service Company and its Subsidiary Companies, Respondents.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

WILLIAM E. TUCKER, being duly sworn, deposes and says: that he is a member of the firm of Mudge, Stern, Williams & Tucker, of counsel for the respondents herein; that he has read the foregoing motion, and that the allegations set forth therein are true to the best of his knowledge and belief.

WILLIAM E. TUCKER.

Sworn to before me this }
23rd day of May, 1940. }

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

T. JUSTIN MOORE, being duly sworn, deposes and says: that he is a member of the firm of Hunton, Williams, Anderson, Gay & Moore, of counsel for the respondents herein; that he has read the foregoing motion, and that the allegations set forth therein are true to the best of his knowledge and belief.

T. JUSTIN MOORE.

Sworn to before me this }
23rd day of May, 1940. }

THOMAS J. FLANAGAN.

(NOTARIAL STAMP)

(NOTARIAL SEAL)

[Document No. 578—R. pp. 10411-10412]

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES,
Respondents,

File No. 59-4.

Memorandum Opinion

Engineers Public Service Company and its subsidiary companies have filed a Motion to Dismiss these proceedings which were instituted by the Commission pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935.

Respondents urged three points in support of their Motion. First, it is urged that Section 11 (a) and Section 30 of the Act are conditions precedent to a proceeding under Section 11 (b) (1). Second, it is urged that the Notice and Order is improper because it seeks to shift to Respondents a burden which under the Act rests with the Commission. Third, that the Commission's Rules of Practice constitute a deprivation of Respondents' property without due process of law.

We construe the Motion to Dismiss as in effect a request for a recitation of the Commission's tentative conclusions of the character recently granted by the Commission on the basis of a similar request by The United Gas Improvement Company in the proceedings under Section 11 (b) (1) involving the holding company system of that company.[1] On the basis of our decision in that case, we will in this proceeding issue an appropriate statement setting forth our tentative views as to what action is necessary to bring about compliance with Section 11 (b) (1).

[1] See our opinion in *The United Gas Improvement Company*, ... Sec. ....., Holding Company Act Release No. 2065 (1940).

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In order that the Respondents may have sufficient time to prepare for the hearing on the basis of the Commission's statement, the hearing now scheduled for June 10, 1940, will be postponed until a time to be fixed by further order of the Commission.

By the Commission, Commissioner Healy referring for his views to the opinion in the Matter of The Commonwealth & Southern Corporation et al. disposed of this day, and Commissioner Henderson being absent and not participating herein.

FRANCIS P. BRASSOR,
Secretary.

(SEAL)

[Document No. 578—R. p. 10413]

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 1st day of June, A. D., 1940.

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES,
Respondents,

Order of Postponement

File No. 59-4.

It appearing to the Commission that a hearing in the above-captioned matter pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935 has been set for the tenth day of June, 1940, at 10:00 o'clock a.m. at the office of the Securities and Exchange Commission, 1778 Pennsylvania Avenue, N. W., Washington, D. C.;

IT IS ORDERED that such hearing be, and the same hereby is, postponed subject to the further order of the Commission. All interested parties or persons will govern themselves accordingly.

By the Commission.

FRANCIS P. BRASSOR,
Secretary.

(SEAL)

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[Document No. 564—R. pp. 10264-10320]

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER *of* ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES, Respondents, File No. 59-4.	**Answer of Engineers Public Service Company and Its Subsidiary Companies** **to** **Notice of and Order for Hearing Pursuant to Section 11 (b) (1) of the Public Utility Holding Company Act of 1935**

ENGINEERS PUBLIC SERVICE COMPANY (hereinafter usually referred to as "Engineers") and its subsidiary companies named in the aforesaid notice of and order for hearing, respondents, by their attorneys, Mudge, Stern, Williams & Tucker, and Hunton, Williams, Anderson, Gay & Moore, answering said notice of and order for hearing, without, however, waiving, and hereby expressly reserving and refusing to waive, any constitutional, legal or other right which said respondents or any of them may now or hereafter possess to challenge the validity of said notice and order or any other order at any time issued in this or any other proceeding or to challenge the validity of any provision of the Public Utility Holding Company Act of 1935 (hereinafter usually referred to as the Act), or any rule or regulation issued thereunder, as applied to any of the respondents, and expressly relying on Rule U-4 of the General Rules and Regulations of the Securities and Exchange Commission issued under the Act, on information and belief:[1]

[1] All admissions made herein are for the purposes of this proceeding and not otherwise, the respondents reserving the right to deny, qualify or explain any admission herein made in any future proceeding between the parties hereto or other parties. As herein used, certain terms defined in the Act, such as "Commission", "holding company", "registered holding company", "holding-company system", "subsidiary company", "associate company", "affiliate", "public-utility company", "electric utility company", "gas utility company", "mutual service company", "security", "voting security", "utility assets", "integrated public-utility system", etc., are intended to have the same meaning, except when otherwise required by the context, as when used in the Act.

PART I

1. Admit the allegations of paragraph 1 thereof except they deny that Engineers maintains principal offices for the doing of business in the City of New York, State of New York.

2. Admit the allegations of paragraphs 2 and 3 thereof except they deny that the nature of the respective businesses of the subsidiary companies named in said paragraphs is fully described therein and that Wallace Falls Power Company is a subsidiary company of Engineers or of Engineers and one of the companies named in paragraph 1 of said notice and order.

3. Admit the allegations of paragraph 4 thereof except they deny that the nature of the business of Engineers Public Service Company, Inc. is fully described therein.

4. Deny the allegations of paragraph 5 thereof except they admit that as of December 31, 1938 certain companies in the holding-company system of Engineers served with electricity communities having an aggregate population of approximately 2,328,500 located in the States named in said paragraph; and that as of December 31, 1938 certain companies in said holding-company system served with gas communities having an aggregate population of approximately 254,000 located in the States of Louisiana, Virginia and Washington; and that certain companies in said holding-company system are engaged in various other businesses.

5. Admit the allegations of paragraph 6 thereof except they deny that El Paso Electric Company, a Texas corporation, owns a half interest in the two toll bridges therein referred to and allege that said company owns and operates the American part of said toll bridges.

6. Admit the allegations of paragraphs 7 to 21, inclusive, 23 and 24 thereof, except they deny that said para-

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graphs fully describe the respective businesses of the companies therein named or the manner in which said businesses are conducted, and except they deny that El Paso and Juarez Traction Company, referred to in paragraph 18 thereof, owns a street railway in Juarez, Mexico, and also owns a half interest in the toll bridges mentioned in said paragraph, and allege that said El Paso and Juarez Traction Company owns certain street railway facilities in Juarez, Mexico, and the Mexican part of said two toll bridges.

7. As to each and every allegation contained in paragraph 22 thereof, deny that they have any knowledge or information thereof sufficient to form a belief, except they deny that Wallace Falls Power Company, therein referred to, is a subsidiary company of Engineers, or of Puget Sound Power & Light Company, or of Washington Electric Company.

8. Deny each and every allegation contained in paragraph 25 thereof except they admit that the holding-company system of Engineers is not confined in its operations to those of a single integrated public-utility system as defined in the Act.

PART II.

FURTHER ANSWERING SAID NOTICE OF AND ORDER FOR HEARING, THE SAID RESPONDENTS, ON INFORMATION AND BELIEF, ALLEGE:

9. Engineers is a corporation organized under the laws of the State of Delaware in 1925, with broad charter powers. It has an authorized capital stock of 431,000 shares of preferred stock, of several series, without par value, of which 423,015 shares are issued and outstanding in the hands of the public, and 1,909,968 shares of common stock of the par value of $1 each all of which have been issued and are outstanding in the hands of the public, said issued and out-

standing stock representing $44,211,468 of capital of said corporation. It has approximately 6,340 record holders of its preferred stock and 17,600 record holders of its common stock, resident in many States. The business in which Engineers is now engaged consists solely of owning and holding shares of stock and other securities of public utility and other corporations and the conduct of matters incidental thereto. It is not engaged in any business in, or which burdens or directly affects, interstate commerce. It is a registered holding company, and owns, controls or holds with power to vote, voting securities, and owns, controls or holds other securities, in the amounts below stated of the following corporations:[2]

A. 2,778,710 shares of the common stock of *Virginia Electric and Power Company*, a Virginia corporation, with its principal office and place of business at Richmond, Virginia, which shares of stock were acquired by Engineers at a cost of $21,733,636. Said corporation has an authorized capital stock of 250,000 shares of preferred stock without par value, of which 195,290 shares of $6 Dividend Preferred Stock are issued and outstanding in the hands of the public, and 4,000,000 shares of common stock without par value, of which 2,788,445 shares are issued and outstanding, said preferred and common stock issued and outstanding together representing $35,843,143 of capital of said corporation. It has approximately 4,850 record stockholders, resident in many States. As of April 1, 1940, said corporation had issued and outstanding in the hands of the public $37,500,000 principal amount of First and Refunding Mortgage Bonds, Series B 3½%, due in 1968, and was also liable on long term bank loans, maturing serially from 1940 to 1946, in the aggregate principal amount of $4,000,000. Said corporation owns and operates interconnected facilities used for the generation, transmission and distribution of elec-

[2] In some instances in stating herein or in subsequent paragraphs the amount of voting securities held by a particular corporation, voting securities owned by directors for qualifying purposes are included.

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tric energy for sale to the public in certain cities and communities, having an area of about 10,000 square miles, in the eastern part of the State of Virginia and the northeastern part of the State of North Carolina. It also owns and operates facilities used for the production and distribution of gas at retail in Norfolk and South Norfolk, Virginia, and vicinity. As an incident to its business it sells electric and gas appliances. It also owns and operates street railway and bus systems in and between certain municipalities in the State of Virginia. Said Virginia Electric and Power Company is subject to the powers vested in, and is regulated by, the State Corporation Commission of Virginia and the Utilities Commission of North Carolina. That portion of the business of said corporation which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce, is subject to the powers vested in the Federal Power Commission under the Federal Power Act. Said corporation is currently paying dividends on its outstanding preferred and common stock.

B. 280,000 shares of the common stock of *Gulf States Utilities Company,* a Texas corporation with its principal offices and places of business at Baton Rouge, Louisiana, and Beaumont, Texas, which shares of stock are carried by Engineers at a cost of $19,914,347. Said corporation has an authorized capital stock of 105,000 shares of preferred stock of two series without par value, of which 99,994 shares are issued and outstanding, and 300,000 shares of common stock without par value, of which 280,000 shares are issued and outstanding, said preferred and common stock issued and outstanding together (including $538,128 of appropriated capital surplus) representing $21,100,525 of capital of said corporation. It has approximately 2,715 record holders of its preferred stock, resident in many states. As of April 1, 1940, said corporation had issued and outstanding in the

hands of the public $27,300,000 principal amount of First Mortgage and Refunding 3½% Bonds, due in 1969, and was also obligated to the extent of $3,700,000 on a long term bank loan due serially to 1945. It owns and operates facilities used for the generation, transmission and distribution of electric energy for sale at wholesale and retail in various cities and communities, having an area of about 27,500 square miles, in southeast Texas and south central Louisiana. Some of the electric energy generated or purchased by it is transmitted over its transmission lines from Texas into Louisiana and from Louisiana into Texas. It owns facilities for the supplying of process steam to three large industrial consumers. It also owns and operates facilities used for the distribution of natural gas at retail in the city of Baton Rouge, Louisiana, and vicinity. As an incident to its said business it sells electric and gas appliances. Said corporation is also engaged in the business of furnishing ice and water in certain communities. It is subject to the powers vested in, and is regulated by, the Public Service Commission of the State of Louisiana and the various municipalities served by it in the State of Texas. That portion of the business of said corporation which consists of the transmission of electric energy in interstate commerce, and the sale of such energy at wholesale in interstate commerce, is subject to the powers vested in the Federal Power Commission under the Federal Power Act. Said corporation is currently paying dividends on its outstanding preferred and common stock.

C. 3,377 shares of the 7% Preferred Stock, Series A, and 56,494 shares of the common stock, of *El Paso Electric Company*, a Delaware corporation with its principal office and place of business at Wilmington, Delaware, which shares of stock were acquired by Engineers at a cost of $385,308 and $5,391,862, respectively. Said corporation was organized in 1924 with

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broad charter powers. It has an authorized capital stock of 30,000 shares of 7% Preferred Stock, Series A, of the par value of $100 each, of which 25,988 shares are issued and outstanding, 3,494 shares of 6% Preferred Stock, Series B, of the par value of $100 each, of which 176 shares are issued and outstanding, and 58,282 shares of common stock without par value, all of which are issued and outstanding, said preferred and common stock issued and outstanding together representing $5,530,500 of capital of said corporation. It has approximately 1,170 record stockholders, resident in many States. At the present time it is engaged solely in the business of owning and holding shares of stock and other corporate securities and the conduct of matters incidental thereto. It is not engaged in any business in, or which burdens or directly affects, interstate commerce. Said corporation is currently paying dividends on its outstanding preferred stock and during the year ending December 31, 1939, had a balance of earnings available for its outstanding common stock. Said corporation is a registered holding company. It owns, controls or holds with power to vote, voting securities in the amounts below stated of the following corporations:

(1) All the issued and outstanding shares of common stock of *El Paso Electric Company*, a Texas corporation with its principal office and place of business at El Paso, Texas, which shares of stock, together with the shares of stock of El Paso and Juarez Traction Company, hereinafter mentioned, now held and owned by said El Paso Electric Company (Delaware), have a book value of $4,155,516. Said El Paso Electric Company (Texas) has an authorized capital stock of 10,000 shares of $6 Dividend Preferred Stock without par value, of which 7,785 shares are issued and outstanding, and 175,000 shares of common stock without par value, of which 150,000 shares are issued and outstanding, said pre-

ferred and common stock issued and outstanding together representing 3,768,704 of capital of said corporation. It has approximately 466 record stockholders, resident in many States. As of April 1, 1940, said corporation had issued and outstanding in the hands of the public $8,000,000 principal amount of First Mortgage 5% Bonds, due in 1950. Said corporation owns and operates facilities used for the generation, transmission and distribution of electric energy for sale, in the States of Texas and New Mexico. Its main plant for the generation of electric energy is located in the State of New Mexico near the city of El Paso, Texas. It also owns a standby generating plant in said city, and two small generating plants in Texas, the latter not being physically interconnected, or as a practical matter capable of physical interconnection, with its other facilities. Most of the electric energy generated by said corporation in its main plant is sold to the public in and near El Paso, Texas. It also sells electric energy to Mesilla Valley Electric Company, hereinafter mentioned, which in turn sells the same to the public in certain communities in the State of New Mexico. It also sells electric energy at the international border between Texas and Mexico to (a) El Paso and Juarez Traction Company, hereinafter mentioned, for the operation of a street railway in Juarez, Mexico, and (b) a Mexican corporation, in which neither Engineers nor any company in the Engineers holding-company system has any stock interest. As an incident to its said business it sells electric appliances. It owns and operates a street railway and bus system in the city of El Paso, Texas. It also owns and operates the American part of two international toll bridges across the Rio Grande River between El Paso and Juarez, and operates under a contract the Mexican part of said bridges and the street railway facilities in Juarez, Mexico, owned by said El Paso and Juarez Traction Com-

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pany. Said El Paso Electric Company (Texas) is subject to the powers vested in, and is regulated by, the State Corporation Commission of New Mexico, and the city of El Paso, Texas, and other municipalities served by it in the State of Texas. That portion of the business of said corporation which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce, is subject to the powers vested in the Federal Power Commission under the Federal Power Act. Said corporation is currently paying dividends on its outstanding preferred and common stock.

(2) All of the issued and outstanding shares of capital stock of *Mesilla Valley Electric Company*, a New Mexico corporation with its principal office and place of business at Las Cruces, New Mexico, which shares of stock were acquired by said El Paso Electric Company (Delaware) at a cost of $150,000. Said Mesilla Valley Electric Company has an authorized capital stock of 6,000 shares without par value of which 3,000 shares are issued and outstanding, said shares issued and outstanding representing $150,000 of capital of said corporation. As of April 1, 1940, said corporation was indebted on its demand income notes held by said El Paso Electric Company (Delaware) in the principal amount of $795,000. It owns and operates facilities used for the transmission and distribution of electric energy for sale to the public in certain communities along the Rio Grande in the southern part of the State of New Mexico. It also owns and operates facilities used for the generation and distribution of electric energy for sale in Hillsboro, New Mexico, not physically interconnected, nor as a practical matter capable of physical interconnection, with its other facilities. As an incident to its business it sells electric appliances. All facilities owned and operated for the above purposes are

located within the State of New Mexico. It is subject to the powers vested in, and is regulated by, the State Corporation Commission of New Mexico. Said corporation is currently paying dividends on its outstanding capital stock.

(3) All the shares of the capital stock of *El Paso and Juarez Traction Company,* a Texas corporation with its principal office and place of business at El Paso, Texas. Said corporation has an authorized capital stock of 50,000 shares without par value all of which are issued and outstanding, said shares representing $500,000 of capital of said corporation. Said corporation as its sole business owns certain street railway tracks, together with their overhead appurtenances, in Juarez, Mexico, and the Mexican part of the two international toll bridges mentioned in paragraph 9 C (1) hereof. Said corporation is currently paying dividends on its outstanding capital stock.

D. $1,032,000 principal amount of First Mortgage and Refunding 5½% Bonds, Series A, due in 1960, 31,341 shares of the $1.50 Dividend Preferred Stock, Series A, 10,000 shares of the $6 Dividend Preferred Stock, Series B, and 500,000 shares, being all the shares, of the common stock, of *The Western Public Service Company,* a Maryland corporation with its principal office and place of business at Scottsbluff, Nebraska, which bonds and shares of stock were acquired by Engineers at a cost of $825,600, $720,843, $750,000, and $5,000,568, respectively. Said corporation was organized in 1929 with broad charter powers. It has an authorized capital stock of 100,000 shares of preferred stock without par value, of which 49,633 shares are issued and outstanding, in two series, and 500,000 shares of common stock without par value, all of which are issued and outstanding, said preferred and common stock issued and outstanding together representing $6,661,559 of capital of said corporation.

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It has approximately 375 record stockholders, resident in many States. As of April 1, 1940, said corporation had issued and outstanding $4,941,000 principal amount of its said First Mortgage and Refunding 5½% Bonds, all of which were in the hands of the public except $1,032,000 principal amount thereof owned by Engineers as above stated, and was obligated on certain municipal bonds in the aggregate principal amount of $307,000 assumed by it upon the purchase of municipal plants. Said The Western Public Service Company owns and operates facilities used for the generation and transmission and/or distribution of electric energy for sale in Nebraska, Wyoming, South Dakota and Colorado, and also purchases electric energy, and distributes the same, in communities in Nebraska. Electric energy generated by said corporation is, to a relatively small extent, transmitted across State lines, but most of the electric energy generated by said corporation is sold in the State in which generated. As an incident to its said business it sells electric appliances. It is also engaged in the business of furnishing water, ice and steam in certain communities. Said corporation is subject to the powers vested in, and is regulated by, the respective regulatory commissions of the States of Wyoming, Colorado and Nebraska and the cities or villages served by it in the State of Nebraska and the community served by it in the State of South Dakota. That portion of the business of said corporation which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce is subject to the powers vested in the Federal Power Commission under the Federal Power Act. Said corporation is currently paying interest on its outstanding bonds and dividends on its outstanding preferred stocks, and during the year ending December 31, 1939, had a balance of earnings available for its outstanding common stock.

In addition to the foregoing activities, said corporation, which is a registered holding company, owns,

controls or holds with power to vote, voting securities, and owns, controls or holds other securities, in the amounts below stated of the following corporations:

(1) All the shares of the capital stock of *The Northern Kansas Power Company,* a Kansas corporation with a principal office and place of business at White Cloud, Kansas, which shares of stock were acquired by said The Western Public Service Company at a cost of $10,000. Said The Northern Kansas Power Company has an authorized capital stock of 100 shares without par value all of which are issued and outstanding, said shares representing $10,000 of capital of said corporation. As of April 1, 1940, said corporation was indebted to The Western Public Service Company on open account in the sum of $13,000. It owns and operates facilities used for the purchase and distribution of electric energy for sale to the public in White Cloud and Woodruff, Kansas. All the facilities owned and operated for the above purpose are located and operated wholly within the State of Kansas. It is subject to the powers vested in, and is regulated by, the Corporation Commission of the State of Kansas.

(2) $635,000 principal amount of First Mortgage 6% (Income) Bonds, Series A, due in 1953, and all the shares of the capital stock, of *Missouri Service Company,* a Missouri corporation with a principal office and place of business at Tarkio, Missouri, which bonds and shares of stock were acquired by said The Western Public Service Company at a cost of $635,000 and $441,119, respectively. Said Missouri Service Company has an authorized capital stock of 7,500 shares without par value, all of which are issued and outstanding, said shares representing $477,718 of capital of said corporation. As of April 1, 1940, said corporation had issued and outstanding $635,000 principal amount of its said First Mortgage 6% (Income) Bonds, all of which were owned by said

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The Western Public Service Company as aforesaid, and was also indebted to said The Western Public Service Company on open account in the amount of $101,000. Said Missouri Service Company owns and operates facilities used for the generation, transmission and distribution of electric energy for sa to the public in certain communities in the States of Missouri and Iowa. Some of the electric energy generated by said corporation is transmitted across State lines from Missouri into the States of Iowa, Nebraska and Kansas. As an incident to its business it sells electric appliances. It also engages in the business of furnishing ice and water in certain of said communities. It is subject to the powers vested in, and is regulated by, the Public Service Commission of the State of Missouri and the community served by it in the State of Iowa. That portion of the business of said corporation which consists of the transmission of electric energy in interstate commerce and the sale of such energy at wholesale in interstate commerce, is subject to the powers vested in the Federal Power Commission under the Federal Power Act.

E. 1,309,338 shares of the common stock of *Puget Sound Power & Light Company*, a Massachusetts corporation with a principal office and place of business at Seattle, Washington, which shares of stock were acquired by Engineers at a cost of $34,097,994. Said corporation was organized in 1912 with broad charter powers. It has an authorized capital stock of 110,000 shares of prior preference stock without par value, all of which are issued and outstanding in the hands of the public, 500,000 shares of preferred stock without par value, of which 263,995 shares are issued and outstanding in the hands of the public, and 2,000,000 shares of common stock without par value, of which 1,318,388 shares are issued and outstanding, said prior preference preferred and common stock issued and outstanding together representing $48,446,847 of capi-

tal of said corporation. It has approximately 19,450 record stockholders, resident in many States. As of April 1, 1940, said corporation had issued and outstanding in the hands of the public $36,040,000 principal amount of First and Refunding Mortgage Series A 5½% Bonds, due in 1949, $8,850,000 principal amount of First and Refunding Mortgage Series C 5% Bonds, due in 1950, and $14,029,000 principal amount of First and Refunding Mortgage Series D 4½% Bonds, due in 1950. It owns and operates interconnected facilities used for the generation, transmission and distribution of electric energy for sale at retail and wholesale in various communities in the western and central parts of the State of Washington. It also owns and operates facilities used for the production and distribution of gas at retail in Bellingham and Wenatchee, Washington. As an incident to its business it sells electric and gas appliances. It also furnishes telephone and steam service to the public in certain communities, all in the State of Washington. All the facilities owned and operated for the above purposes are located and operated within the State of Washington, and said corporation is not engaged in any business in, or which burdens or directly affects, interstate commerce. Said corporation is subject to the powers vested in, and is regulated by, the Department of Public Service of the State of Washington. During the year ending December 31, 1939, said corporation earned its dividend requirements for such year on its prior preference and preferred stocks and had a balance of earnings remaining. A dividend of $1.25 per share was declared January 12, 1940, payable April 15, 1940, on account of arrearages on said prior preference stock.

In addition to the foregoing activities, said corporation owns, controls or holds with power to vote, voting securities in the amounts below stated of the following corporations, none of which is a public-utility company:

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(1) All the shares of the capital stock of *Washington Electric Company*, a Maine corporation with a principal office and place of business at Seattle, Washington, which shares of stock were acquired by said Puget Sound Power & Light Company at a cost of $600,000. Said Washington Electric Company has an authorized capital stock of 6,000 shares of common stock of $100 par value each, all of which are issued and outstanding, said shares of stock representing $600,000 of capital of said corporation. As of April 1, 1940, said corporation was indebted to said Puget Sound Power & Light Company on open account in the amount of $102,500. Its business consists solely of owning and holding land and water rights in the State of Washington and it is not engaged in any business in, or which burdens or directly affects, interstate commerce.

(2) All the shares of the capital stock of *North Coast Transportation Company*, a Washington corporation with its principal office and place of business at Seattle, Washington, which shares of stock are carried by said Puget Sound Power & Light Company at a cost of $1,100,004. Said North Coast Transportation Company has an authorized capital stock of 11,000 shares of common stock of $100 par value each, all of which are issued and outstanding, said shares of stock representing $1,100,000 of capital of said corporation. As of April 1, 1940, said North Coast Transportation Company was indebted to said Puget Sound Power & Light Company on demand income notes and on open account in the aggregate amount of $1,444,000, and also in the amount of $1,218,000 secured by a first mortgage on substantially all property of said North Coast Transportation Company. Said North Coast Transportation Company operates motor buses between points in the States of Washington and Oregon and the Province of British Columbia, and owns and operates terminal

properties in the State of Washington. It owns all of the capital stock of Independent Stages, Inc., a Nevada corporation, which is engaged in the operation of buses between Portland, Oregon, and Seattle, Washington.

(3) All the shares of the capital stock of *Diamond Ice & Storage Company,* a Washington corporation with its principal office and place of business at Seattle, Washington, which shares of stock were acquired by said Puget Sound Power & Light Company at a cost of $185,108. Said Diamond Ice & Storage Company has an authorized capital stock of 5,000 shares of common stock of $100 par value each, of which 3,165 shares are issued and outstanding, said shares of stock issued and outstanding representing $316,500 of capital of said corporation. As of April 1, 1940, said corporation was indebted to said Puget Sound Power & Light Company on its demand income notes in the principal amount of $344,000. It is engaged in the ice manufacturing and cold storage business in the city of Seattle, Washington. In addition, it owns 498, out of 1,000 issued and outstanding, shares of the capital stock of The Ice Delivery Company, a Washington corporation, which is engaged in the business of selling ice in the city of Seattle, Washington. Neither said Diamond Ice & Storage Company nor said The Ice Delivery Company engages in any business in, or which burdens or directly affects, interstate commerce.

F. 5,500 shares of the 8% Debenture Stock, Series A, and 133,106 shares of the common stock, of *Savannah Electric and Power Company,* a Georgia corporation with its principal office and place of business at Savannah, Georgia, which shares of stock were acquired by Engineers at a cost of $612,361 and $2,553,404, respectively. Said corporation has an authorized capital stock of 33,000 shares of debenture and preferred stock of various series of the par value of $100 per share,

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of which 29,363 shares are issued and outstanding, and 200,000 shares of common stock without par value, of which 133,334 shares are issued and outstanding, said debenture, preferred and common stock issued and outstanding together representing $6,037,355 of capital of said corporation. Said corporation has approximately 1,480 record stockholders, resident in many States. As of April 1, 1940, said corporation had issued and outstanding in the hands of the public $4,462,000 principal amount of its First and Refunding Mortgage Series F 5% Bonds, due in 1955; $996,000 principal amount of its First and Refunding Mortgage Series D 4% Bonds, due in 1947; and $1,872,000 principal amount of First Consolidated Mortgage 5% Bonds, due in 1952, of Savannah Electric Company, a predecessor company. It owns and operates facilities used for the generation, transmission and distribution of electric energy for sale to the public in the city of Savannah, Georgia, and in certain communities in Chatham and Bryan Counties, Georgia. Said facilities are not physically interconnected with those of any other electric utility company in the Engineers or any other public-utility holding-company system or otherwise. As an incident to its said business it sells electric appliances. It also operates a street railway and bus service in the city of Savannah, Georgia, and adjacent communities. All the facilities owned and operated for the above purposes are located and operated wholly within the State of Georgia and said corporation is not engaged in any business in, or which burdens or directly affects, interstate commerce. Said corporation is subject to the powers vested in, and is regulated by, the Public Service Commission of the State of Georgia. Said corporation is currently paying dividends on its outstanding debenture and preferred stock and during the year ending December 31, 1939, had a balance of earnings available for its outstanding common stock.

G. 1,742 shares of the 7% Preferred Stock, and 5,000 shares of the common stock, of *The Key West*

Electric Company, a New Jersey corporation with its principal office and place of business at Key West, Florida, which shares of stock were acquired by Engineers at a cost of $46,760 and $278,969, respectively. Said corporation has an authorized capital stock of 3,482 shares of 7% Preferred Stock of the par value of $100 each and 5,000 shares of common stock without par value all of which are issued and outstanding, said preferred and common stock together representing $473,200 of capital of said corporation. It has approximately 80 record holders of its said Preferred Stock. As of April 1, 1940, said corporation had issued and outstanding in the hands of the public $422,000 principal amount of First Mortgage 5% Bonds, due in 1956. Said corporation as its sole business owns and operates facilities used for the generation and distribution of electric energy for sale to the public in the city of Key West, Florida, and as an incident thereto sells electric appliances in said city. All the facilities owned and operated for the above purposes are located in the State of Florida. Said facilities are not physically interconnected with those of any other electric utility company in the Engineers or any other public-utility holding-company system or otherwise and such interconnection would be impracticable. Said corporation is not engaged in any business in, or which burdens or directly affects, interstate commerce. It is currently making payments on account of arrearages in preferred stock dividends.

H. All the shares of capital stock of *Baton Rouge Bus Company, Inc.,* a Louisiana corporation with its principal office and place of business at Baton Rouge, Louisiana, which shares of stock were acquired by Engineers at a cost of $180,000. Said Baton Rouge Bus Company, Inc. has an authorized capital stock of 2,000 shares without par value, all of which are issued and outstanding, said shares of stock representing $180,000 of capital of said corporation. Said corporation owns

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and operates a bus system in the city of Baton Rouge, Louisiana, and vicinity. It is not engaged in any business in, or which burdens or directly affects, interstate commerce. Said corporation is currently paying dividends on its outstanding capital stock.

I. 169 shares of said $6 Dividend Preferred Stock of said El Paso Electric Company (Texas), which shares were acquired by Engineers at a cost of $16,659.

10. If the act is valid, each of the subsidiary companies of Engineers, as well as Engineers itself, is subject to the powers vested in, and is or may be regulated by, the Commission in respect of many matters, including, among others, (a) the issuance or sale of any of its securities; (b) the exercise of any privilege or right to alter the priorities, preferences, voting power, or other rights of the holders of any outstanding security; (c) the borrowing of money on any note or draft having a maturity of more than nine months or to an amount exceeding five per centum of the principal amount and par value of its outstanding securities; (d) the acquisition, directly or indirectly, of any securities or utility assets or any other interest in any business; (e) the loaning of money or the extending of credit to or the indemnifying of any company in the same holding-company system; (f) the declaration or payment of any dividend on, or the acquisition, retirement or redemption of, any of its outstanding securities; (g) the solicitation of any proxy, power of attorney, consent, or authorization regarding any security of a registered holding-company or of a subsidiary company thereof; (h) the negotiation or performance of any transaction not otherwise unlawful under the Act with (1) any company in the same holding-company system, (2) any person that owns five per centum or more of the voting securities in any company in such system, (3) any company five per centum or more of whose voting securities are owned by any company in said system, (4) any officer or director of any company in such system or of any company that owns five per centum or more of

the voting securities of any company in such system; (i) the keeping of its accounts, cost-accounting procedures, correspondence, memoranda, papers, books and other records; and, as to any subsidiary company of Engineers, (j) the negotiation or performance of any contract by which it undertakes to perform services or construction work for, or to sell goods to, any associate company.

11. With minor exceptions, the electric, gas, street railway, bus, water and steam heating businesses owned or operated by subsidiary companies of Engineers as aforesaid are owned or operated by virtue of and pursuant to franchises lawfully issued to said subsidiary companies by the respective cities or communities in which such businesses are carried on. Under some of said franchises the company owning and holding the same is required to continue operations thereunder, or to render certain services to the city or community which granted the franchise, until the termination of the franchise. Under some of said franchises the company owning and holding the same is not permitted to discontinue operations thereunder without the consent of the city or community which granted it or without being so authorized by a State regulatory body.

12. *Engineers Public Service Company, Inc.* (hereinafter usually referred to as the service company) is a corporation organized under the laws of the State of New York in 1926, having its principal office and place of business in New York, New York. It is a mutual service corporation engaged in furnishing technical and expert services to public-utility and other corporations. Its authorized capital stock consists of 25,000 shares of $5 par value each, of which 20,000 shares are issued and outstanding. Said 20,000 shares are owned proportionately on the basis of gross operating revenues by certain of the companies operating public utilities or other businesses referred to in paragraph 9 hereof, the present ownership of said shares being as follows:

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Name of Company Owning Shares	Number of Shares Owned
Baton Rouge Bus Company, Inc.	99
Diamond Ice & Storage Company	48
El Paso Electric Company (Texas)	1053
El Paso and Juarez Traction Company	33
Gulf States Utilities Company	3822
Key West Electric Company, The	72
Mesilla Valley Electric Company	105
Missouri Service Company	69
North Coast Transportation Company	597
Northern Kansas Power Company, The	2
Puget Sound Power & Light Company	5388
Savannah Electric and Power Company	862
Virginia Electric and Power Company	7136
Western Public Service Company, The	714
Total	20,000

The service company has a contract with each of the operating companies owning its stock pursuant to which it furnishes certain essential technical and expert services (including executive, advisory, financial, purchasing, sales promotion, personnel, insurance, accounting, statistical, tax, and corporate services) to said companies, all of such services being furnished at cost. It also furnishes services at cost, pursuant to contract, to Engineers and to El Paso Electric Company (Delaware). It would not be possible, except at a greatly increased cost, for any of said operating or holding companies, by increasing their own personnel or otherwise, to provide an adequate substitute for the services heretofore and now rendered by the service company. The separation of any operating company from the services performed on its behalf at cost by the service company would not only deprive such operating company of the services of technicians and specialists who are thoroughly familiar with it and its operating and other problems and force it to obtain substitute service elsewhere at a greatly increased cost but would also increase the expense

of such services to the other operating companies to which the service company renders services since there would be fewer companies to share its expenses.

13. The acquisition and ownership by Engineers, El Paso Electric Company (Delaware), The Western Public Service Company, Puget Sound Power & Light Company, North Coast Transportation Company, and Diamond Ice & Storage Company, of the shares of stocks and bonds of their respective subsidiary companies, as above set forth, and the acquisition and ownership by subsidiary companies of Engineers of utility and other assets, and shares of stock of the service company, as above set forth, were in all respects lawful and proper under all laws applicable thereto, including Federal laws, and the ownership thereof is still in all respects lawful and proper under the respective charters of said corporations and under the laws of the States in which they were respectively organized.

14. The shares of stock and other securities now held and owned by Engineers, as above set forth, were acquired by it in order to secure wide territorial diversification of the public-utility companies in its holding-company system so as to obtain the economic benefits of diverse factors affecting both the quantity and continuity of gross earnings of such companies, and such territorial diversification has resulted, and will continue to result, in substantial benefits to Engineers and its subsidiary companies which would not otherwise be possible.

15. Public-utility districts have been created in 13 of the 19 counties in the State of Washington in which the said Puget Sound Power & Light Company sells electric energy. For a considerable period of time certain of said public-utility districts have been and are now actively investigating ways and means of acquiring, by purchase or otherwise, substantial portions of the utility assets and business of said Puget Sound Power & Light Company. During 1938 and 1939 representatives of certain of said public-utility

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districts and of the city of Seattle have had numerous discussions with representatives of Engineers and of said Puget Sound Power & Light Company in an effort to arrive at an acceptable plan for the acquisition of certain of said utility assets and business; but in view of the many diverse interests and wide differences of opinion as to the values of property involved little progress to this end has been made. Six of said public-utility districts have instituted, and there are now pending, condemnation proceedings for the acquisition of the electric-utility assets of said Puget Sound Power & Light Company (excluding major power plant and transmission facilities) located in said districts. At least one other public-utility district has authorized the institution of similar condemnation proceedings. The disposition of said condemnation proceedings now pending and those which will probably be instituted in the near future may, and probably will, require many years. In March, 1940, commissioners from five of said thirteen public-utility districts caused to be organized under the laws of the State of Washington a non-profit corporation which has as its principal purpose the acquisition, as an entirety and going concern, of the property and assets, including franchises, business and good will of said Puget Sound Power & Light Company; and said corporation has commenced negotiations in an effort to accomplish such purpose. In the meantime no sale or exchange of the common stock of Puget Sound Power & Light Company could be made except at an unwarranted sacrifice to the owners and holders of such stock.

16. For more than two years representatives of said The Western Public Service Company have been carrying on active negotiations with representatives of three public power districts for the sale of such of its utility assets as are located in the State of Nebraska. In 1938 a contract for the purchase and sale of such assets was drafted and agreed upon as to form, including a formula for determination of the purchase price, but the execution thereof was vigorously opposed in the communities involved and it was not executed. Said The Western Public Service Company

has executed agreements giving to certain cities in Nebraska the right to ninety days' notice before entering into any agreement to sell utility assets of said corporation located in said cities. Under these conditions, Engineers can not sell or exchange the common and preferred stocks of The Western Public Service Company now held by it except at an unwarranted sacrifice.

17. Section 11 (b) (1) of the Act, if valid, makes it the duty of the Commission, as soon as practicable after January 1, 1938, to require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system, and to one or more additional integrated public-utility systems, if the Commission finds that such additional systems meet the requirements of subdivisions (A), (B) and (C) of Section 11 (b) (1). To this end, the Commission has instituted proceedings, similar to the instant proceeding, against many registered holding companies and subsidiary companies thereof. To comply with the provisions of Section 11 (b) (1) it will be necessary for Engineers and numerous other registered holding-companies and the respective subsidiary companies thereof to dispose of large blocks of holding-company, public-utility and other securities and large amounts of utility and other assets. Under the Act and particularly Sections 9 and 10 thereof, such securities and assets could be disposed of only to a limited class of purchasers. Under Section 11 (c) of the Act, the securities and assets which each such registered holding-company and its subsidiary companies must dispose of in order to comply with Section 11 (b) (1) must be disposed of within a maximum period of two years from the date of the order of the Commission directing such disposition. The issuance of such an order

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in this and other like proceedings now pending before the Commission would result in a forced liquidation of large amounts of holding-company, public-utility and other securities and utility and other assets, and would seriously depress the market therefor. In such a depressed and limited market it would not be possible for Engineers or its subsidiary companies to realize the fair value of such of their respective holding-company, public-utility and other securities and utility and other assets as they would have to dispose of in order to comply with Section 11 (b) (1). Moreover, even in a market not limited and depressed as aforesaid, in any forced liquidation of a substantial amount of their securities, the common stocks of Engineers and of its subsidiary companies would be greatly depreciated in value by virtue of priorities of preferred stockholders; and it would not be possible for Engineers or its subsidiary companies, within two years from the date of any final order in this proceeding, to dispose of such securities and such assets as they would have to dispose of in order to comply with Section 11 (b) (1) without unwarranted sacrifice of the values of the securities of Engineers and of its subsidiary companies, many of which are widely held by the public, to the irreparable injury and damage of the owners of such securities.

18. The provisions of Section 11 (b) (1) of the Act would, if valid, destroy investments made by Engineers and its subsidiary companies in holding-company, public-utility and other securities and utility and other assets which were in all respects lawful and proper under all applicable laws at the time they were made. Said provisions would also limit and restrict, and thus *pro tanto* destroy (a) rights and powers, validly vested in Engineers and its subsidiary companies by their respective charters and by the laws of the States in which they were respectively organized and in which they respectively operate, to hold, maintain, administer and dispose of their respective properties, and to exercise proprietary rights with respect thereto, and otherwise, (b) the right, discretion and duty of the directors and

officers of Engineers and its subsidiary companies, created and imposed by the laws of the States in which they were respectively organized and in which they respectively operate, to manage their respective businesses and affairs, and (c) contracts, lawfully entered into, between subsidiary companies of Engineers and others, including the service company. Moreover, Section 11 (b) (1) of the Act, if applied to Engineers and its subsidiary companies, would impair their respective credit, would depreciate the value of the securities and properties respectively held by them, would impose upon them heavy additional costs and expenses, and would subject their respective businesses to restrictions and limitations which would seriously interfere with their efficient and economical management and reduce their earnings and the value of their assets, thus diminishing the value of the investments held by Engineers and its subsidiary companies and destroying or reducing the value of the securities of Engineers and its subsidiary companies, widely held by the public, to the irreparable injury and damage of Engineers, its subsidiary companies and the respective holders of their securities.

19. Section 11 (b) (1) of the Act, and each and every provision of said Section 11 (b) (1), is unconstitutional, void and of no force and effect, as and if applied to any of the respondents, for the following, as well as other, reasons:

(a) It invades the reserved powers of the States, in violation of the Tenth Amendment to the Constitution of the United States, in its interference with intrastate transactions and its attempted control of intrastate corporations in the exercise of charter powers given them by the States of their incorporation;

(b) It is an unlawful exercise of the power of Congress to regulate commerce with foreign nations, among the several States and with the Indian tribes, and in excess of any powers conferred upon Congress to that end;

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(c) It deprives Engineers and the companies in the holding-company system of which Engineers is a part and their respective stockholders of liberty and property without due process of law in violation of the Fifth Amendment to the Constitution of the United States;

(d) It constitutes a taking of the private property of Engineers and of the companies in the holding-company system of which Engineers is a part and of their respective stockholders for public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States;

(e) Its provisions are unjust, unreasonable, arbitrary and capricious and have no real or substantial relation to any proper purpose sought to be accomplished and are in violation of the Constitution of the United States and of the Fifth Amendment thereto;

(f) It fails to prescribe with requisite certainty any standard of conduct thereunder for holding companies, subsidiary companies or affiliates and fails to prescribe with requisite certainty the obligations imposed thereby upon holding companies, subsidiary companies and affiliates, in violation of the Fifth Amendment to the Constitution of the United States;

(g) It constitutes an unlawful delegation of legislative power in violation of Section 1 of Article I of the Constitution of the United States, in that it contains no adequate or reasonable standards by which the action of the Commission, which is charged with the duty of administering said Section and issuing rules, regulations and orders thereunder, is to be determined or controlled; and

(h) It constitutes an unlawful delegation of judicial power in violation of Section 1 of Article III of, and in violation of the Fifth Amendment to, the Constitution of the United States in that it deprives respondents of their right to a judicial determination of all questions of fact affecting their constitutional rights, or

affecting the jurisdiction of the Commission to exercise the powers attempted to be delegated to it, since, under Section 24(a) of the Act, the findings of the Commission as to the facts, if supported by substantial evidence, are conclusive upon the review of any order or rule of the Commission.

PART III.

FURTHER ANSWERING SAID NOTICE OF AND ORDER FOR HEARING, THE SAID RESPONDENTS, WITHOUT WAIVING, AND HEREBY EXPRESSLY RESERVING AND REFUSING TO WAIVE, ANY OF THE RIGHTS, DENIALS, DEFENSES OR CONTENTIONS HEREINABOVE MENTIONED OR SET FORTH, AND EXPRESSLY RELYING ON RULE U-4 OF THE GENERAL RULES AND REGULATIONS OF THE COMMISSION ISSUED UNDER THE ACT, ON INFORMATION AND BELIEF, ALLEGE:

20. They repeat and reallege each and every of the allegations hereinabove set forth in paragraphs 9 to 16, inclusive, with the same force and effect as if herein again set forth in full.

21. The facilities for the production, transmission or distribution of electric energy owned and operated by Virginia Electric and Power Company are physically interconnected and under normal conditions may be and now are economically operated, and the facilities owned and operated by said company for the manufacture and distribution at retail of gas for heat, light or power are so interrelated and are so located and related to the other utility assets owned by said company that substantial economies may be and now are effectuated by being operated, as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation and the effectiveness of regulation; and said company is a single integrated public-utility system. The gas, street railway, bus and electric

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and gas appliance businesses owned and operated by said Virginia Electric and Power Company are coordinated with the electric utility business of said company and could not be carried on as economically or efficiently as they are now carried on if operated as independent businesses. Many of the problems of management of said businesses are closely related to those that arise in connection with the management of the electric utility business of said company. Certain facilities and personnel used in said businesses are used also in said company's electric utility business, with resulting savings in expense. The business of selling electric and gas appliances carried on by said company has enabled, and will continue to enable, it to promote new and increased use of such appliances, thus increasing its market for the sale of electric energy and gas. The businesses other than those of a public-utility company as such carried on by said company are reasonably incidental, or economically necessary or appropriate to the operation of said integrated public-utility system and the retention of its interest in and its continued operation of said businesses is necessary or appropriate in the public interest or for the protection of investors or consumers and is not detrimental to the proper functioning of said system.

22. With minor exceptions, the facilities for the production, transmission or distribution of electric energy owned and operated by said Gulf States Utilities Company are physically interconnected and under normal conditions may be and now are economically operated, and the facilities owned and operated by said company for the distribution at retail of natural gas for heat, light or power are so interrelated and are so located and related with respect to the other utility assets owned by said company that substantial economies may be and now are effectuated by being operated, as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the

effectiveness of regulation; and said company, with the minor exceptions above mentioned, is a single integrated public-utility system. Said minor exceptions are utility assets constituting two small integrated public-utility systems both of which meet the requirements of subdivisions (A), (B) and (C) of Section 11 (b) (1) of the Act. The gas, steam, ice, water and electric and gas appliance businesses owned and operated by said Gulf States Utilities Company, and the bus business owned and operated by Baton Rouge Bus Company, Inc., as aforesaid, are coordinated with the electric utility business carried on by said Gulf States Utilities Company, and could not be carried on as economically or efficiently as they are at present carried on if they were operated as independent businesses. Many of the problems of management of said businesses are closely related to those that arise in connection with the management of the electric utility business of said Gulf States Utilities Company. Certain facilities and personnel used in said businesses are used also in the electric utility business carried on by said company with resulting savings in expense. The business of selling electric and gas appliances carried on by said company has enabled, and will continue to enable, it to promote new and increased use of such appliances, thus increasing its market for the sale of electric energy and gas. The businesses other than those of a public-utility company as such carried on by said company and the bus business carried on by Baton Rouge Bus Company, Inc. are reasonably incidental, or economically necessary or appropriate to the operation of said integrated public-utility system and the retention of their interests in and their continued operation of said businesses is necessary or appropriate in the public interest or for the protection of investors or consumers and is not detrimental to the proper functioning of said system.

23. With minor exceptions, the utility assets owned and operated by the subsidiary companies of El Paso Electric Company, a Delaware corporation, are physically interconnected and under normal conditions may be and now are

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economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and the utility assets owned by the subsidiary companies of said El Paso Electric Company (Delaware), with the minor exceptions above mentioned, constitute a single integrated public-utility system. Said minor exceptions are utility assets constituting three small integrated public-utility systems all of which meet the requirements of subdivisions (A), (B) and (C) of Section 11 (b) (1) of the Act. The street railway, toll bridge, bus and electric appliance businesses owned and operated by certain of said subsidiary companies are coordinated with the electric utility businesses carried on by certain of said subsidiary companies, and they could not be carried on as economically or efficiently as they are now carried on if operated as independent businesses. Many of the problems of management thereof are closely related to those that arise in connection with the management of the electric utility businesses carried on by said subsidiary companies. Certain facilities and personnel used in said businesses other than those of an electric utility company as such are used also in the electric utility businesses carried on by said subsidiary companies, with resulting savings in expense. The businesses of selling electric appliances carried on by El Paso Electric Company (Texas) and Mesilla Valley Electric Company have enabled, and will continue to enable, said companies to promote new and increased use of such appliances, thus increasing their market for the sale of electric energy. The businesses other than those of a public-utility company as such carried on by said subsidiary companies are reasonably incidental, or economically necessary or appropriate to the operation of said integrated public-utility system and the retention of their interests in and their continued operation of said businesses is necessary or appropriate in the public interest or for the protection of investors or consumers and is not detrimental to the proper functioning of said system.

24. The executive personnel of said Engineers Public Service Company, Inc. is composed of men of long experience and recognized accomplishment in their respective fields. Its staff has been built up largely from persons who, over a period of many years, have constructed and operated, and therefore are intimately familiar with, the physical properties in the Engineers holding-company system. The services rendered at cost by the service company to the operating companies are complementary to those of the local management of said operating companies, the relationship being such that supervision and functions which may be most efficiently exercised at a central office are performed by the expert staff of the service company in its New York office while operations and functions local in character and immediately associated with the physical properties, including dealings and relations with consumers, are performed or provided for locally by the officers of the several operating companies. The operating companies in the Engineers holding-company system obtain the advantages of localized management by reason of the authority held and exercised by the officers and employees carrying on the local operations of the subsidiary companies and the character of such officers and employees in relation to the local interests affected. In respect of matters involving broad general policies, major matters of finance or special technical skill and other matters which show savings or other advantages from centralized handling, the service company advises and assists the local organization. Because of the close relationship between the service company and the operating companies and the familiarity of the service company staff with the physical properties and problems of the operating companies, advice and assistance on such matters are quickly obtained by the operating companies. The advantages of the existing relationship between the service company and the operating companies to which it renders services have been, and will continue to be, reflected in the quality, reliability and efficiency of service rendered by the operating companies, both under normal and under extraordinary conditions, and in the progres-

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sively lower rates at which such service has been made available to their respective customers; and the effectiveness of regulation by State and Federal regulatory bodies has not been and will not be impaired by the continued existence of such relationship.

25. Substantial economies are being realized, and will continue to be realized, through the retention by Engineers of its interests in and control over the integrated public-utility system owned and operated by said Virginia Electric and Power Company, as one integrated public-utility system, and the integrated public-utility systems owned and operated by said Gulf States Utilities Company and the subsidiary companies of said El Paso Electric Company (Delaware), as additional integrated public-utility systems (and, in addition, as to each of said systems the businesses other than those of a public-utility company as such owned and operated in connection therewith) by reason of the interrelationship of the companies in said systems and the relationship of said companies to Engineers and to the service company, in the way of more economical and efficient operation and otherwise. Said public-utility systems, operating as independent systems, could not command or secure, except at greatly increased cost, services of the type and character now being rendered to them by the service company. Through retention by Engineers of its interests in and control over said public-utility systems (and, in addition, as to each of said systems, the businesses other than those of a public-utility company as such owned and operated in connection therewith), the subsidiary companies of Engineers, or some of them, have been able, and will continue to be able, because of the financial resources, and the strong cash and credit position, of Engineers, from time to time to obtain necessary financing, both of a temporary and of a permanent character, more readily and at a lower cost than would be the case if each of said systems operated as an independent system. None of the integrated public-utility systems owned and operated by said Virginia Electric and Power Company, said Gulf States Utilities Company

and the subsidiary companies of said El Paso Electric Company (Delaware) could be operated as an independent system without the loss of substantial economies which can be and are now being secured through retention by Engineers of its interests in and control over said systems.

26. All the public-utility systems and other assets owned and operated by said Gulf States Utilities Company and by the subsidiary companies of said El Paso Electric Company (Delaware) are located in the State of Texas or in States adjoining the State of Texas or in a foreign country contiguous to the State of Texas.

27. The continued combination of the integrated public-utility systems owned and operated by said Virginia Electric and Power Company, said Gulf States Utilities Company, and the subsidiary companies of said El Paso Electric Company (Delaware) under the control of Engineers is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

PART IV.

FURTHER ANSWERING SAID NOTICE OF AND ORDER FOR HEARING, THE SAID RESPONDENTS, WITHOUT WAIVING, AND HEREBY EXPRESSLY RESERVING AND REFUSING TO WAIVE, ANY OF THE RIGHTS, DENIALS, DEFENSES OR CONTENTIONS HEREINABOVE MENTIONED OR SET FORTH, AND EXPRESSLY RELYING ON RULE U-4 OF THE GENERAL RULES AND REGULATIONS OF THE COMMISSION ISSUED UNDER THE ACT, ON INFORMATION AND BELIEF, ALLEGE:

28. They repeat and reallege each and every of the allegations hereinabove set forth in paragraphs 9 to 16, inclusive, and 24, with the same force and effect as if herein again set forth in full.

29. The utility assets owned and operated by said The Key West Electric Company are physically interconnected and under normal conditions may be and now are economi-

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cally operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one State, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation and the effectiveness of regulation; and said company is a single integrated public-utility system. The business of selling electric appliances carried on by said company has enabled, and will continue to enable, it to promote new and increased use of such appliances, thus increasing the company's market for the sale of electric energy. Said appliance business is reasonably incidental or economically necessary or appropriate to the operation of said public-utility system and the continued operation of said business is necessary or appropriate in the public interest or for the protection of investors or consumers and is not, and will not be, detrimental to the proper functioning of said system.

30. The utility assets owned and operated by said Savannah Electric and Power Company are physically interconnected and under normal conditions may be and now are economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one State, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation and the effectiveness of regulation; and said company is a single integrated public-utility system. The street railway, bus, and electric appliance businesses carried on by said company are coordinated with the electric utility business carried on by said company and could not be carried on as economically and efficiently as they are now carried on if they were operated as independent businesses. Certain facilities and personnel used in said street railway, bus, and electric appliance businesses are used jointly in connection with said company's electric utility business, with resulting savings in expense. The business of selling electric appliances carried on by said company has enabled, and will continue to enable, it to promote new and increased use of such appliances, thus increasing its market for the

sale of electric energy. The businesses other than those of a public-utility company as such carried on by said company are reasonably incidental, or economically necessary or appropriate to the operation of said integrated public-utility system and the retention of its interest in and its continued operation of said businesses is necessary or appropriate in the public interest or for the protection of investors or consumers and is not detrimental to the proper functioning of said system.

31. With one minor exception, the facilities for the production, transmission or distribution of electric energy owned and operated by said Puget Sound Power & Light Company are physically interconnected and under normal conditions may be and now are economically operated, and the facilities owned and operated by said company for the distribution at retail of gas for heat, light or power are so interrelated and so located and related with respect to the other utility assets owned by said company that substantial economies may be and now are effectuated by being operated, as a single interconnected and coordinated system confined in its operations to a single area or region, in one State, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation and the effectiveness of regulation; and said company, with the minor exception above mentioned, is a single integrated public-utility system. The gas, telephone, bus, electric and gas appliance, steam, ice and cold storage businesses, and the business of holding and owning land and water rights, owned and operated by said company or its said subsidiary companies, as aforesaid, are coordinated with the electric utility business carried on by said company and could not be carried on as economically and efficiently as they are now being carried on if operated as independent businesses. Certain facilities and personnel used in said businesses are used also in the electric utility business of said company, with resulting savings in expense. The business of selling electric and gas appliances carried on by said company has enabled, and will continue to enable, it to promote new and

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increased use of such appliances, thus increasing its market for the sale of electric energy and gas. The businesses other than those of a public-utility company as such carried on by said company are reasonably incidental, or economically necessary or appropriate to the operation of said integrated public-utility system and the retention of its interest in and its continued operation of said businesses is necessary or appropriate in the public interest or for the protection of investors or consumers and is not detrimental to the proper functioning of said system.

32. With minor exceptions, the utility assets of said The Western Public Service Company located in the States of Nebraska and South Dakota and the utility assets of The Northern Kansas Power Company located in the town of Woodruff, Kansas, are physically interconnected or capable of physical interconnection and under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and, with the minor exceptions above mentioned, said utility assets constitute a single integrated public utility system. Said minor exceptions are utility assets constituting several small integrated public-utility systems all of which meet the requirements of subdivisions (A), (B) and (C) of Section 11 (b) (1) of the Act. The ice, steam heating, electric appliance and water businesses carried on by said The Western Public Service Company or its subsidiary companies are coordinated with the electric utility business carried on by said company or its subsidiary companies and could not be carried on as economically and efficiently as they are now being carried on if operated as independent businesses. Certain facilities and personnel used in said businesses are also used in the electric utility business of said company or its subsidiary companies, with resulting savings in expense. The business of selling electric appliances carried on by said company or its subsidiary compa-

nies has enabled, and will continue to enable, them to promote new and increased uses of such appliances, thus increasing their market for the sale of electric energy. The businesses other than those of a public-utility company as such carried on by said company or its subsidiary companies are reasonably incidental, or economically necessary or appropriate to the operation of said public-utility system and the retention of their interests in and their continued operation of said businesses is necessary or appropriate in the public interest or for the protection of investors or consumers and is not detrimental to the proper functioning of said system. The utility assets of Missouri Service Company located in the States of Missouri and Iowa are physically interconnected with those of The Western Public Service Company located in the town of Rulo, Nebraska, and those of The Northern Kansas Power Company located in the town of White Cloud, Kansas, and under normal conditions all said utility assets may be and now are economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and said utility assets constitute a single integrated public-utility system. The ice, water and electric appliance businesses carried on by the Missouri Service Company are coordinated with the electric utility business carried on by said company and could not be carried on as economically or efficiently as they are now being carried on if they were operated as independent businesses. Certain facilities and personnel used in said businesses are used jointly in connection with the Missouri Service Company's electric utility business, with resulting savings in expense. The businesses other than those of a public-utility company as such carried on by said Missouri Service Company are reasonably incidental, or economically necessary or appropriate to the operation of said integrated public-utility system and the retention of its interest in and its continued operation of said businesses is necessary or appropriate in the

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public interest or for the protection of investors or consumers and is not detrimental to the proper functioning of said system. None of the integrated public-utility systems owned and operated by said The Western Public Service Company and its subsidiary companies could be operated as an independent system without the loss of substantial economies which can be and are now being secured through retention by The Western Public Service Company of its interest in and control over said systems. All of said public-utility systems are located in the State of Nebraska or in states adjoining the State of Nebraska. The continued combination of said integrated public-utility systems under the control of The Western Public Service Company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

WHEREFORE, respondents pray that the Commission withdraw its said notice and order or enter an order dismissing this proceeding and grant such other and further relief in the premises as may be just and proper.

Dated: April 5, 1940.

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Attorneys for Engineers Public Service Company and its Subsidiary Companies, Respondents.

[Document No. 580—R. pp. 10514-10519]

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 11th day of March, A. D., 1941.

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY and ITS SUBSIDIARY COMPANIES, Respondents.

Statement of Tentative Conclusions of the Commission and Order Reconvening Hearing.

File No. 59-4.

Engineers Public Service Company, a holding company of securities of certain companies engaged in the public utility business and in miscellaneous other businesses, registered on February 21, 1938 as a holding company under the Public Utility Holding Company Act of 1935. On February 28, 1940, the Commission issued a Notice of an Order for hearing pursuant to Section 11 (b) (1) of said Act[1] in

[1] Section 11 (b) (1) of the Act provides:

"(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:

(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—

(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;

(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and

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respect to Engineers Public Service Company and its subsidiary companies, Respondents, stating therein that it appears that the holding-company system of Engineers Public Service Company is not confined in its operations to a single integrated public utility system [2] and to such other businesses as are reasonably incidental or economically necessary or appropriate to the operation of such integrated public utility system within the meaning of the Act. On April 5, 1940, respondents filed an Answer to said Notice of an Order for Hearing.

On May 24, 1940, respondents filed a Motion which in effect requested that they be furnished with a statement by the Commission of tentative conclusions as to the particular portions of the present system upon which the aforementioned statement in the Notice of and Order for

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(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation.

The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

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[2] An integrated public-utility system is defined in Section 2 (a) (29) of the Act, as follows:

"(29) 'Integrated public-utility system' means

(A) As applied to electric utility companies, a system consisting of one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation; and

(B) As applied to gas utility companies, a system consisting of one or more gas utility companies which are so located and related that substantial economies may be effectuated by being operated as a single coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (considering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation: *Provided*, That gas utility companies deriving natural gas from a common source of supply may be deemed to be included in a single area or region."

Hearing was predicated, and as to what action the Commission tentatively believes necessary to effect compliance with Section 11(b)(1) of the Act, so as to tender issues for hearing. On June 1, 1940, the Commission, in its Opinion issued that date[3] undertook on the basis of its decision on a similar request by The United Gas Improvement Company in similar proceedings under Section 11(b)(1), involving The United Gas Improvement Company holding-company system, to state such tentative conclusions.[4] Pending the preparation and issuance of such a statement by the Commission, the proceedings have been held in abeyance.

To aid it in arriving at its conclusions, the Commission directed its staff to prepare a report setting forth informative data with respect to the Engineers Public Service Company holding company system and suggesting the application of the pertinent provisions of the Act.

APPLICATION OF SECTION 11 (b) (1) OF THE ACT.

As shown by the Notice of and Order for Hearing previously issued in this proceeding, the public-utility subsidiaries in the Engineers Public Service holding-company system serve widely scattered sections of the country, Engineers' public-utility subsidiaries are engaged principally in rendering electric service which is furnished in: Virginia and North Carolina by Virginia Electric and Power Company; Georgia by Savannah Electric and Power Company; Louisiana and Texas by Gulf States Utilities Company; Texas and New Mexico by El Paso Electric Company (Texas); Washington by Puget Sound Power & Light Company; Wyoming, South Dakota, Nebraska, Colorado, Kansas, Missouri and Iowa by the Western Public Service

[3] *In the Matter of Engineers Public Service Company and Its Subsidiary Companies, Respondents,* Holding Company Act Release No. 2084 (1940).

[4] *In the Matter of The United Gas Improvement Company and Its Subsidiary Companies, Respondents,* Holding Company Act Release No. 2065 (1940). The Commission stated therein: ". . . we consider the notice already given as adequate at this stage of the proceeding. Nevertheless, since the respondents have requested a recitation of the Commission's tentative conclusions, together with a full description of 'such action as the Commission has tentatively concluded to be necessary under the provisions of Section 11(b)(1)', at the outset of the proceedings, and since no person could be injured by such a statement, we are willing to enlarge our original notice."

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Company and subsidiaries; and Florida by The Key West Electric Company. None of the electric-utility properties of any public-utility subsidiary is interconnected with those of any other such company.[5] Gas service is also rendered in Virginia, Louisiana and Washington by the same subsidiaries rendering electric service in such states.

The subsidiary companies are, also engaged in various non-utility businesses and have interests in other businesses.

The principal public-utility properties in the holding-company system from the standpoint of book value, revenues and size and scope of operations are the electric-utility properties of Virginia Electric and Power Company, Gulf States Utilities Company and Puget Sound Power & Light Company. However, no income has been received on Engineer's investment in Puget Sound Power & Light Company since 1930, the company is substantially in arrears on its preferred stock dividends, and it appears that condemnation proceedings have been instigated against certain portions of its public-utility properties and negotiations have been pending for some time for the sale of the assets of the company to public authorities.

In light of the foregoing, we proceed to set forth our tentative conclusions as to the application of Section 11 (b) (1) of the Act to the Engineers Public Service Company and its subsidiary companies and properties owned and operated thereby on two alternative assumptions as to the public-utility properties which may constitute the single integrated public-utility system referred to in that section of the Act.

The Single Integrated System.

The single integrated public utility system to which the operations of Engineers Public Service Company holding company system should be limited is composed of the units of electric generating plants, transmission lines and distribution facilities owned and operated by Virginia Electric

[5] With the exception of such interconnection between The Western Public Service Company and its two subsidiaries, which for the present purpose may be treated as one company.

and Power Company.[6] This integrated public-utility system (hereinafter sometimes referred to for convenience as "Virginia Electric System") serves an area of approximately 15,000 square miles which is approximately 140 by 210 miles in size, in the States of Virginia and North Carolina and has approximately 159,000 customers in the area which has a population of approximately 793,000. The book value of such properties amounted to $64,664,000 as at December 31, 1939 and the gross revenues from the operation of such properties during 1939 amounted to $13,775,000. However, assuming that the interconnected electric utility properties of Gulf States Utilities Company constitute an integrated public-utility system, such system (hereinafter sometimes referred to, for convenience, as "Gulf States Electric System") alternatively may be regarded as the single integrated public-utility system within the meaning of Section 11 (b) (1) of the Act.

The application of the other provisions of Section 11 (b) (1) of the Act are discussed alternatively as to each of such possible single integrated systems.

"Virginia Electric System" as the Single Integrated System.

Properties not retainable under Clause (B) of Section 11 (b) (1).[7]

The application of Clause (B) of Section 11 (b) (1) of the Act precludes the retention, with the electric utility properties of Virginia Electric and Power Company, under the control of Engineers Public Service Company of the utility assets owned or operated by: Gulf States Utilities

[6] The gas-utility assets owned and operated by Virginia Electric and Power Company cannot be regarded as part of this system. *In the Matter of Columbia Gas & Electric Corporation*, Holding Company Act Release No. 2477 (1940).

[7] In accordance with our Statement of Tentative Conclusions in *In the Matter of The United Gas Improvement Company et al.*, Holding Company Act Release No. 2500, we tentatively conclude that Clause (B) of Section 11 (b) (1) means that a holding company may continue to control an integrated public-utility system or systems additional to the "single" integrated public-utility systems only if all such additional system or systems are located in the same State or States in which the "single" system is located, or in States adjoining thereto.

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Company in the States of Louisiana and Texas; El Paso Electric Company (Texas) in the States of Texas and New Mexico; The Western Public Service Company and its subsidiaries in the States of Wyoming, South Dakota, Nebraska, Colorado, Kansas, Missouri and Iowa; Puget Sound Power & Light Company in the State of Washington and The Key West Electric Company in the State of Florida.

Properties not retainable under Clauses (A) and (C) of Section 11 (b) (1).

The Commission expresses no conclusion at this time as to whether electric-utility assets owned and operated by Savannah Electric and Power Company constitute one or more integrated electric-utility systems inasmuch as it appears unlikely that, irrespective of such status, the standards of Clauses (A) and (C) of Section 11 (b) (1) of the Act could be satisfied. Accordingly, the retention of such assets in the Engineers Public Service Company holding company system would be precluded.

The Commission expresses no conclusion at this time as to whether the gas-utility assets owned and operated by Virginia Electric and Power Company constitute one or more integrated public-utility systems or whether they are retainable under control of Engineers Public Service Company as one or more additional systems to the integrated electric-utility system of Virginia Electric and Power Company.

Other Businesses Incidental to the "Single" Integrated System.

The Commission expresses no conclusion at this time as to whether the appliance or transportation businesses owned and operated by Virginia Electric and Power Company are retainable in the holding-company system as reasonably incidental, or economically necessary or appropriate to the operation of the single integrated public-utility system of that company.

"GULF STATES ELECTRIC SYSTEM" AS THE SINGLE INTEGRATED SYSTEM.

Properties not retainable under Clause (B) of Section 11 (b) (1).[8]

The application of Clause (B) of Section 11 (b) (1) of the Act precludes the retention, with the electric-utility properties of Gulf States Utilities Company, under control of Engineers Public Service Company of the utility assets owned or operated by: Virginia Electric and Power Company in the States of Virginia and North Carolina; Savannah Electric and Power Company in the State of Georgia; The Key West Electric Company in the State of Florida; The Western Public Service Company and its subsidiaries in the States of Wyoming, South Dakota, Nebraska, Colorado, Kansas, Missouri and Iowa; and Puget Sound Power & Light Company in the State of Washington.

Properties not retainable under Clauses (A) and (C) of Section 11 (b) (1).

The Commission expresses no conclusion as to whether the electric-utility assets owned or operated by El Paso Electric Company (Texas) constitute an integrated electric-utility system inasmuch as it appears unlikely, that, irrespective of such status the standards of Clauses (A) and (C) of Section 11 (b) (1) could be satisfied. Accordingly, the retention of such assets in the Engineers Public Service Company holding-company system would be precluded.

The Commission expresses no conclusion at this time as to whether the gas-utility assets owned and operated by Gulf States Utilities Company constitute one or more integrated public-utility systems or whether they are retainable under control of Engineers Public Service Company as one or more additional systems to Gulf States Electric System.

Other Business Incidental to the Single Integrated System.

The Commission expresses no conclusion at this time as to whether the appliance, steam, ice or water businesses

[8] See footnote 7.

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owned or operated by Gulf States Utility Company, or whether the bus business owned and operated by Baton Rouge Bus Company, Inc., are reasonably incidental, or economically necessary or appropriate to the operation of Gulf States Electric System.

INTEREST AND OTHER BUSINESSES.

It does not appear desirable at this time to determine whether securities held by Engineers Public Service Company and its subsidiaries of non-associate enterprises are retainable in the holding company system, and the Commission will defer consideration of such matter until after the other issues raised by the proceedings have been determined.

ORDER RECONVENING HEARING.

IT IS HEREBY ORDERED that a hearing be held on March 25, 1941, at ten o'clock in the forenoon of that day, in Room 1102 of the Securities and Exchange Commission Building, 1778 Pennsylvania Avenue, N.W., Washington, D. C., at which time the Commission will hear the respondents as to the issues present in this proceeding, and will consider the simplification of the issues, the facts and issues that appear to be without substantial basis of controversy, the order of presentation of evidence most conducive to an orderly proceeding, and such other matters as may aid in the disposition of the proceeding. At such time respondents shall show cause why the Commission should not forthwith issue an Order requiring respondent, Engineers Public Service Company, to divest itself of its interest in all subsidiaries, except: Virginia Electric and Power Company and Savannah Electric and Power Company; or, Gulf States Utilities Company, El Paso Electric Company (Delaware) and Baton Rouge Bus Company, Inc.

By the Commission (Chairman Frank, Commissioners Healy, Eicher, Henderson and Pike).

FRANCIS P. BRASSOR,
Secretary.

(SEAL)

[Document No. 581—R. pp. 10520-10525]

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION.

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY
AND ITS SUBSIDIARY COMPANIES,
Respondents.

File Number 59-4.

(Public Utility Holding Company
Act of 1935, Section 11 (b) (1))

Answer to Commission's Order of March 11, 1941 to Show Cause Why an Order Requiring Divestment of Certain Interests Should Not Be Entered.

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Of Counsel.

March 25, 1941.

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ANSWER TO SHOW CAUSE ORDER.

In the order of the Commission dated March 11, 1941, it is ordered, among other things, as follows:

> "At such time (that is on March 25, 1941) respondents shall show cause why the Commission should not forthwith issue an Order requiring respondent, Engineers Public Service Company, to divest itself of its interest in all subsidiaries, except: Virginia Electric and Power Company and Savannah Electric and Power Company; or, Gulf States Utilities Company, El Paso Electric Company (Delaware) and Baton Rouge Bus Company, Inc."

In response to such order the Respondents show cause as follows:

1. Under Sec. 11 (b) (1) of the Act it is clearly contemplated that the Respondent, Engineers Public Service Company, shall have the right to choose which of its integrated public utility systems it shall retain as its single integrated public utility system, together with such additional integrated public utility systems and incidental businesses as may be found to be in conformity with that section of the Act. In order to have any substance (and indeed in order to save the constitutionality of the section if otherwise constitutional) that choice must be made at a time when Engineers Public Service Company is in a position to make an intelligent choice. It cannot make an intelligent choice until it knows, on the basis of the final findings of the Commission, what are its integrated public utility systems and which of such systems and incidental businesses may be retained. The entry of the proposed order would deprive Engineers Public Service Company of this right to which it is entitled.

2. Sec. 11 (b) (1) contemplates the entry of a single final order by the Commission after notice and opportunity

for hearing and does not contemplate nor provide for piecemeal and fragmentary orders, or a series of orders prior to the single final order required by said section; and such single order must come after the choice mentioned in paragraph 1 above shall have been made by Engineers Public Service Company as to the single integrated public utility system and additional systems and incidental businesses and other interests to which said section purports to limit the operations of the holding company system.

3. The entry forthwith of an order of divestment of interest, such as is proposed in the show cause order, would deprive the subsidiaries which are made the subject of such order, in the event Engineers Public Service Company should divest itself of control as to any of them, of the right to be declared under Sec. 2 (a) (8) of the Act not to be a subsidiary of the Respondent, Engineers Public Service Company and thus deprive the Respondent, Engineers Public Service Company of its corresponding right to cease to be a holding company with respect to said subsidiaries respectively. The entry of any order which does not reserve such rights to the subsidiaries mentioned and to the Respondent, Engineers Public Service Company, would clearly violate the provisions of the Act.

4. The entry forthwith of an order of divestment of interest, such as is proposed in the show cause order, would deprive the Respondent, Engineers Public Service Company, of the opportunity of obtaining for such properties a fair and reasonable price. Unless a purchaser of such properties has full knowledge respecting the status under the Act of the properties proposed to be purchased, he necessarily must assume the risk of ultimate determination of such status after such acquisition, if the purchaser be one who is, or might because of such purchase become, subject to the provisions of the Act, and such element of risk would naturally adversely affect the price such purchaser would be willing to pay. Matters with respect to which there should be a final determination by the Commission prior to

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the entry of an order of divestment are, among others, as follows: (a) with respect to The Western Public Service Company, whether its electric utility assets constitute a single integrated public utility system, or if it shall be found that its electric utility assets constitute more than one integrated public utility system, how many of such systems may be retained by The Western Public Service Company under the Act and what incidental businesses The Western Public Service Company may retain; (b) with respect to El Paso Electric Company (Delaware), whether its electric utility assets constitute a single integrated public utility system, or if it shall be found that its electric utility assets constitute more than one integrated public utility system, how many of such systems may be retained by El Paso Electric Company (Delaware) under the Act and what incidental businesses El Paso Electric Company (Delaware) may retain; and (c) with respect to Virginia Electric and Power Company, Puget Sound Power & Light Company, The Key West Electric Company, Gulf States Utilities Company, and Savannah Electric and Power Company, whether their utility assets respectively constitute an integrated public utility system under the Act, or if it be found that such assets respectively constitute more than one integrated public utility system, how many of such systems may be retained by such companies respectively under the Act and what incidental businesses of such companies respectively may be retained.

5. In paragraph 19 of its answer to the original notice of and order for hearing herein, Respondents aver that Sec. 11 (b) (1) of said Act and each and every of the provisions thereof is unconstitutional, void and of no force and effect, as and if applied to any of the Respondents, for the reasons therein set forth, as well as for other reasons, and the Respondents hereby reassert and herein rely upon said averments. In addition to the intention of the Respondents to urge in the pending proceedings the unconstitutionality of the section on its face, the Respondents are preparing and propose at the hearing before the Commission to introduce

economic and other evidence bearing upon said constitutional issues. The entry of any order before the Respondents have been afforded full opportunity for hearing before the Commission would be to deprive the Respondents and their security holders of property without due process of law.

Respectfully submitted,

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[Document No. 591—R. pp. 10689-10732]

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON.

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES, Respondents,

Findings and Opinion of the Commission.

File No. 59-4.

Public Utility Holding Company Act of 1935—Section 11 (b) (1).

PRACTICE AND PROCEDURE

Evidence.

Evidence bearing solely upon constitutionality of statute administered by Commission *excluded*, the Commission deeming itself without power to declare such statute or part thereof unconstitutional, and considering that a reviewing court, in the event an appeal is taken, could order such evidence to be adduced later if it sees fit to do so.

SIMPLIFICATION OF HOLDING COMPANY SYSTEM

Geographical Limitations.

Under Section 11(b)(1), clause (B) of proviso permitting continued control of additional integrated public-utility systems by holding company *held*, to restrict such additional systems to those operating in a State in which the principal system operates, or in States adjoining such a State, or in a foreign country contiguous thereto.

Selection of Principal System.

In proceeding under Section 11(b)(1), where holding company had not selected principal integrated public-

utility system to which the operations of its holding-company system would be limited, and claim is made that the holding company has the right to make such selection, *held,* that whether or not such right of selection belongs to the holding company or to the Commission (which question was not decided) the holding company would be permitted under the circumstances to select one of its two most profitable integrated systems, either one being satisfactory in the opinion of the Commission, and the choice being a close one. *Held further,* that although the Commission was under no duty to do so, it would try certain ancillary issues and make advisory findings thereon to aid the holding company to make such selection.

Intermediate Order Requiring Divestment.

Where certain utility and non-utility properties were not retainable in relation to either of two possible principal utility systems, and divestment thereof would be necessary whichever of such systems were selected as the principal one, holding company *ordered* to divest itself of such non-retainable properties, such divestment being action (though not all the action) necessary for ultimate compliance with Section 11(b)(1).

Status of Properties to be Divested.

Where holding company claimed the right to have the Commission make findings as to the status of properties to be divested, *i.e.,* as to whether or not utility systems were integrated systems and as to whether or not non-utility businesses were reasonably incidental or economically necessary or appropriate to the operations of such utility systems, *held,* that in respect of such non-retainable properties belonging to subsidiaries which were not registered holding companies, findings would be advisory only and inasmuch as they would be largely academic and would not be materially helpful if made in the Section 11(b)(1) proceeding, they would not be made therein; *further held,* that in respect of non-retainable properties belonging to a

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subsidiary which was a registered holding company, such findings were required to be made in a Section 11(b)(1) proceeding, but whether they were made before or after the top holding company was ordered to divest itself of the subholding company, was a matter within the discretion of the Commission.

Retention of Investment Interest.

Where subsidiary companies operated utility systems and other businesses which the holding-company system could not continue to operate under Section 11(b)(1), *held*, that the top holding company was required to divest itself of all its interests in such companies, and a mere reduction of its holding of voting securities of such companies would not be sufficient to constitute compliance with Section 11(b)(1).

Appearances:

WILLIAM E. TUCKER and CHARLES D. G. BRECKENRIDGE, of MUDGE, STERN, WILLIAMS & TUCKER, and T. JUSTIN MOORE and RICHARD W. EMORY, of HUNTON, WILLIAMS, ANDERSON, GAY & MOORE, for the Respondents.

HARLOW B. LESTER, JAMES FISCHGRUND and MAURICE C. KAPLAN, for the Public Utilities Division of the Commission.

This is a proceeding instituted by our order[1] under Section 11(b)(1) of the Public Utility Holding Company Act of 1935 against Engineers Public Service Company, a registered holding company, and each of its subsidiary companies. The purpose of the proceeding is to carry out the statutory mandate contained in that section of the Act, that we "require by order, after notice and opportunity for hearing, that . . . [the respondents] shall take such action as the Commission shall find necessary to limit the operations of the holding-company system . . . to a single

[1] Order dated February 28, 1940, Holding Company Act Release No. 1945.

integrated public-utility system,[2] and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system: *Provided, however,* that the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems . . ." if such systems meet the statutory standards prescribed in Section 11(b)(1).[3]

Respondents moved to dismiss the proceeding on the ground that no preliminary report of studies by the Commission under Section 11(a) or Section 30 of the Act had been rendered to respondents in respect of their holding-company system. In that connection respondents contended, among other things, that our notice and order were improper because, in their failure to specify in what respects such system did not comply with the standards of Section 11(b)(1), they did not tender specific issues for hearing and therefore cast an undue burden on the respondents. We construed the motion to dismiss as in effect a request for a statement setting forth our tentative views as to what action is necessary to bring about compliance by the respondents with Section 11(b)(1).[4] We also directed the Public Utilities Division to prepare a report of their studies of the Engineers system to aid us in arriving at tentative conclusions, and postponed the hearing herein pending the preparation of our statement and

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[2] The term "integrated public-utility system" is defined in Section 2(a)(29) of the Act.

[3] Section 11(b)(1) further provides:

"The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

[4] *Engineers Public Service Company,* 7 S. E. C. 371 (1940). Similar questions have been raised in other proceedings under Section 11(b)(1), *e.g. United Gas Improvement Company, et al.,* 7 S. E. C. 341 (1940); *Electric Bond and Share Company, et al.,* 7 S. E. C. 391 (1940); *The Commonwealth & Southern Corporation, et al.,* 7 S. E. C. 369 ('940). In connection with the last named proceeding we have more fully explored the requirements of Section 30 of the Act, and our opinion therein, when issued, will state the reasons for our conclusion that no report under that section need be submitted to respondents in proceedings under Section 11(b)(1).

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to afford the respondents sufficient time to prepare for hearing on the basis thereof.

Studies of the respondent's system having been made and reported to us by the Public Utilities Division,[5] we issued a statement of our tentative conclusions on March 11, 1941. At the same time we ordered a hearing to be held before us on March 25 to consider (a) the issues in this proceeding, (b) the simplification of issues, (c) such facts and issues as appeared to be without substantial basis of controversy, (d) the order of presentation of evidence most conducive to an orderly proceeding, and (e) such other matters as might aid in the disposition of the proceeding.[6] Our order reconvening the hearing further directed the respondents to show cause why we should not forthwith issue an order requiring respondent, Engineers Public Service Company, "to divest itself of its interest in all subsidiaries, except: Virginia Electric and Power Company and Savannah Electric and Power Company; or, Gulf States Utilities Company, El Paso Electric Company (Delaware) and Baton Rouge Bus Company, Inc."[7]

At the hearing on March 25 it became apparent that the dominant question at this stage of the proceeding was the proper interpretation of the geographic requirements of clause (B) of the proviso to Section 11(b)(1) applicable to the "one or more additional integrated public-utility systems" retainable by a holding company in addition to the "single integrated public-utility system" to which, in general, the operations of each holding-company system are required to be limited.

Other questions dealt with in this opinion are: whether or not evidence bearing upon the constitutionality of the Act is admissible in this proceeding; whether or not the respondent top holding company has the right to select the integrated public-utility system which it will retain as

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[5] See Report in this matter dated March 5, 1941, as corrected April 15, 1941, and released to the public.

[6] Statement of Tentative Conclusions of the Commission and Order Reconvening Hearing, Holding Company Act Release No. 2607.

[7] *Id.* The order does not, of course, mean that Engineers will be able to retain all of the companies excepted therein, but only that determination of the issues regarding those companies should be deferred until a later date.

its "single" or "principal system";[8] whether or not it is necessary for us to make findings under Section 11(b)(1) regarding the status of properties required to be divested; and whether or not the respondent may retain an investment interest in one or more of the properties which it may not continue to operate under Section 11(b)(1).

We heard oral argument on the foregoing matters, and briefs were exchanged and filed. A reply brief was filed by respondents. Our discussion of the issues will be subdivided under the following headings:

1. Evidence bearing on the constitutionality of the Act

2. The Engineers holding-company system

3. Geographical limitation on additional systems under Section 11(b)(1)(B)

(a) Contentions of respondents and of the staff

(b) Congressional intent

(c) Rationale under the statute

(d) Application to the Engineers holding-company system

4. Selection of principal system

5. Status of properties to be divested

6. Extent of divestment required.

7. Nature of order to be entered herein, and instructions regarding the further conduct of hearings.

1. *Evidence Bearing on the Constitutionality of the Act.*

Respondents have claimed in this proceeding that portions of the Act are unconstitutional, and have proffered evidence of an economic nature in support of such claim.

[8] The term "principal system," though not appearing in the Act, has been commonly used with reference to the "single integrated public-utility system" permitted by Section 11(b)(1) and appears in the Conference Report (H. R. Rep. No. 1903, 74th Cong., 1st Sess.), p. 71.

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While we recognize the principle that evidence of relevant and material facts offered to rebut the presumption of constitutionality may be received in an appropriate proceeding,[9] we think that under the pertinent decisions of the Supreme Court the type of evidence proffered here would not be admissible in judicial proceedings involving the constitutionality of the Act. That question, however, is for the courts to determine and is not before us. But even if we assume, for the purpose of argument only and without conceding the point, that such evidence would be admissible in appropriate judicial proceedings, we still conclude that it would not be admissible in this proceeding before us.

It is well established that an administrative body such as this Commission has no authority to pass on the constitutionality of an act which it is called upon to administer.[10] We have heretofore declined to pass upon the validity of the Securities Exchange Act of 1934[11] or to entertain the argument, in a proceeding under the Public Utility Holding Company Act of 1935, that the business conducted by a particular holding company was of such character as to be beyond the regulatory powers of Congress.[12] This Commission having been specifically directed by Congress to enforce Section 11(b)(1), our lack of power to pass upon the validity of the Act in this type of proceeding is particularly patent. Accordingly, we must proceed on the assumption that Section 11(b)(1) is constitutional unless and until the courts declare otherwise.

There are a number of sound reasons for excluding evidence relating solely to the question of constitutionality.

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[9] *Polk Company* v. *Glover*, 305 U. S. 5 (1938); *Borden's Farm Products Co.* v. *Baldwin*, 293 U. S. 194 (1934); *Borden's Farm Products Co.* v. *Ten Eyck*, 11 Fed. Supp. 599 (S. D. N. Y.) 1935). See also Note, *The Presentation of Facts Underlying the Constitutionality of Statutes* (1936), 49 Harv. L. Rev. 631; Note, *The Presumption of Constitutionality Reconsidered* (1936), 36 Co. L. Rev. 283.

[10] *Panitz* v. *District of Columbia*, 112 F. (2d) 39 (App. D. C. 1940); *State* v. *State Board of Equalizers*, 84 Fla. 592, 94 So. 681 (1922); *East Ohio Gas Company*, 28 P. U. R. (n.s.) 128 (Federal Power Comm. 1939); *Galveston Commercial Association* v. *Galveston H. & S. A. Ry. Co.*, 128 I. C. C. 349 (1927).

[11] *Walston & Co.*, 5 S. E. C. 112, 113 (1939); *J. A. Sisto & Co.*, 7 S. E. C. 647, 653, n. 5 (1940).

[12] *Houston Natural Gas Corporation*, 3 S. E. C. 664, 671 (1938).

Since we must in any event refrain from passing upon the validity of the legislation, such evidence would not be relevant to any of the issues before us. Nor could the admission of evidence of this character possibly aid us to determine what action must be taken by respondents in order to satisfy the requirements of Section 11(b)(1). On the contrary, its admission would encumber the record and unnecessarily complicate the task of sifting the evidence relating to the issues which are properly before us.

Moreover, an attack by the respondents upon the constitutionality of the Act prior to any determination by us as to what action they must take under Section 11(b)(1) would be premature. Prior to such a determination by us, the respondents cannot know to what extent and in what respects, if any, they will care to claim that our order violates any of their constitutional rights. It would seem, therefore, that respondents should await our order so that they can state specifically in what respects they claim that the Act, as applied to them, violates constitutional immunities.

It may be urged that the evidence should be received so that it will be available for consideration by a court upon judicial review of one or more of our orders herein, in the event such review is sought. But the taking of such evidence would clearly be a waste of effort in the event judicial review were not sought, while if it were, the reviewing court could decide whether or not such evidence should be taken before this Commission, and if so, instruct us with respect to the proper limits of such evidence. Without instructions from the court, we should be in the anomalous position of having to determine for ourselves the propriety of such evidence as might be offered in relation to a question which we have no power to decide.

The case of *Panitz* v. *District of Columbia*[18] indicates the propriety of excluding such evidence in this proceeding. In that case, the petitioners were ordered to show cause, at a hearing to be held before the tax assessor of the District of Columbia, why their license to do business in the District

[18] *Supra*, footnote 10.

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should not be revoked for failure to pay the tax required by Title VI of the District of Columbia Revenue Act of 1937. Prior to the date set for the hearing the petitioners paid the tax, stating that payment was made under protest to avoid revocation of their license. Thereafter, pursuant to a statute which permits a taxpayer, who has paid any tax to the District involuntarily, to appeal from the imposition of such tax, the petitioners filed a petition for refund with the Board of Tax Appeals, alleging that Title VI of the Revenue Act was unconstitutional. The Board dismissed the petition for want of jurisdiction on the ground that the petitioners did not pay the tax involuntarily, since they paid it without proceeding to the hearing that the assessor would have accorded them.

On appeal, the decision of the Board was reversed. The Court held that the assessor, like other administrative officials, could not pass on the constitutionality of the statute under which he operated and, therefore, could not hear the petitioners' objections to the tax. The Court said:

> "Since the assessor had no inherent authority to exempt from the tax on constitutional grounds, and no such power was given by the Act or rules adopted thereunder, he was not in a position to hear the petitioners' objections to the tax assessed against them. Payment of the tax was therefore necessary to prevent revocation of their license and hence involuntary."[14]

Accordingly, the trial examiner will be instructed to exclude evidence bearing solely upon the constitutionality of the Act.

Our action excluding such evidence here will be subject to judicial review in a proper proceeding, and if the reviewing court thinks we are in error it can, of course, reverse our determination and send the case back to us with instructions to receive the evidence. We think it clear that the respondents have adequately saved their rights on this point

[14] 112 F. (2d), at 42. See also *State* v. *Public Service Commission of Missouri*, 259 Mo. 704, 727, 168 S. W. 1156, 1164 (1914).

for the purposes of judicial review. Their counsel, however, has expressed a desire to make a more complete proffer of the evidence in question, and we have no objection to his doing so if he deems it necessary. The time when such proffer may be made will be left to the discretion of the trial examiner.

2. *The Engineers Holding-Company System.*

Engineers registered as a holding company under the Act on February 21, 1938. It was incorporated in 1925 under the laws of Delaware, and has its executive office in New York City. Its subsidiaries are engaged in rendering electric service in fifteen States and gas service in three of those States, and in operating certain other businesses (including transportation, water, ice, steam, and telephone services) in the United States, Canada, and Mexico.[15]

The electric and gas utilities of the holding-company system serve widely scattered sections of the country. Electric service is furnished by Virginia Electric and Power Company in Virginia and North Carolina; by Savannah Electric and Power Company in Georgia; by Gulf States Utilities Company in Louisiana and Texas; by El Paso Electric Company (Texas) in Texas and New Mexico; by The Western Public Service Company and its subsidiaries in Wyoming, South Dakota, Nebraska, Colorado, Kansas, Missouri, and Iowa; by Puget Sound Power & Light Company in Washington; and by The Key West Electric Company in Florida.[16] None of the electric utility properties of any of these subsidiaries is interconnected or economically capable of interconnection with those of any other such company (with the minor exception of two small subsidiaries of The Western Public Service Company which have properties interconnected with those of their parent company). Gas service is rendered in Virginia, Louisiana, and Washington by the subsidiaries which render electric services in

[15] Appendix A of this opinion indicates the nature of the business of each system company, the State and date of its organization, and the State or States in which it operates.

[16] A map showing the approximate areas served with electric energy is annexed as Exhibit 1 to Appendix A.

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those states.[17] The executive office of Engineers, in New York City, is separated from the areas served by its electric and gas utility subsidiaries by distances ranging from 375 miles to 3,100 miles.[18] The entire holding-company system uses and bears the cost of service furnished by Engineers Public Service Company, Inc., a mutual service company organized and having its executive offices in New York.

Approximate figures showing the amounts at which Engineers carried its investments in subsidiaries as of December 31, 1940, were as follows:

Subsidiary	Bonds	Preferred Stock	Common Stock [b]	Total
Virginia El. and P. Co.	.....	.....	$21,734,000	$21,734,000
Gulf States Utilities Co.	.....	.....	19,914,000	19,914,000
Puget Sound P. & L. Co.	.....	.....	34,098,000	34,098,000
The Western P. S. Co.	$826,000	$1,471,000	5,001,000	7,298,000
Savannah El. and P. Co.	.....	612,000	2,553,000	3,165,000
El Paso El. Co. (Del.)	.....	402,000[a]	5,392,000	5,794,000
Baton Rouge Bus Co., Inc.	.....	.....	180,000	180,000
The Key West El. Co.	.....	47,000	279,000	326,000
Total	$826,000	$2,532,000	$89,151,000	$92,509,000

[a] Includes $17,000 of El Paso El. Co. (Tex.)

[b] The amounts at which Engineers carried these stocks differ substantially from the amounts at which common stock and surplus accounts were recorded on the books of the respective subsidiary companies. For example, the common stock and surplus accounts of the three largest subsidiaries, per books of those subsidiaries as of the same date, were approximately as follows:

Subsidiary	Common Stock and Surplus (Combined)
Virginia El. and P. Co.	$23,706,000
Gulf States Utilities Co.	14,769,000
Puget Sound P. & L. Co.	11,027,000

The gross revenues and net income per books of these subsidiaries for the year 1940, and their earnings per books applicable to shares of common stock held by Engineers, were approximately as shown below:

[17] A map showing the principal communities served by gas utility subsidiaries is annexed as Exhibit 2 to Appendix A.

[18] A map illustrating these distances is annexed as Exhibit 3 to Appendix A.

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Subsidiary	Gross Revenues	Net Income	Earnings Applicable to Common Held by Engineers
Virginia El. and P. Co.	$20,992,000	$4,129,000	$2,947,000
Gulf States Utilities Co.	10,733,000	2,426,000	1,841,000
El Paso El. Co. (Del.)*	3,458,000	519,000	280,000
Savannah El. and P. Co.	2,472,000	340,000	130,000
Baton Rouge Bus Co., Inc.	275,000	35,000	35,000
Puget Sound P. & L. Co.*	16,754,000	1,924,000	(A)
The Western P. S. Co.*	2,178,000	184,000	(B)
The Key West El. Co.	234,000	46,000	(B)

*On a consolidated basis.

(A) The net income of Puget Sound Power & Light Company was insufficient to cover its annual preferred dividend requirements by about $209,000. Preferred dividend arrearages at the end of 1940 were $16,224,750.

(B) The net income of The Western Public Service Company and The Key West Electric Company exceeded the annual preferred dividend requirements of those companies by about $64,000 and $22,000, respectively. However, their preferred dividend arrearages were $89,587 and $154,949, respectively, at the end of 1940.

For the four years 1937 to 1940, inclusive, Engineers has received dividends on the common stocks of only four of its present subsidiaries, as follows:

	1937	1938	1939	1940
Virginia El. and P. Co.	$1,945,097	$1,945,097	$2,222,968	$2,222,968
Gulf States Utilities Co.	525,125[a]	888,787[a]	1,120,000	1,120,000
El Paso El. Co. (Del.)	.....	27,723	.....	.....
Baton Rouge Bus Co., Inc.	.....	4,000	25,000	25,000

[a] Includes Louisiana Steam Generating Corporation and Baton Rouge Electric Company, now merged into Gulf States Utilities Company. See *Engineers Public Service Company*, 3 S. E. C. 580 and 751 (1938).

Engineers has received no income since 1930 on its large investment in Puget Sound Power & Light Company, which is substantially in arrears on its preferred dividends. Neither has it received any substantial amount in dividends from The Western Public Service Company for a number of years. At the argument before us counsel for respondents stated that at the present time Engineers is actively negotiating for the sale of the properties of the Puget Sound company, and that the sale of the Western company

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properties "is probably in the cards somewhat more indefinitely, perhaps, than the Puget Sound, but it is there, nevertheless."

The Virginia and Gulf States companies which, as we have seen, have yielded far greater earnings and dividends than any of the other subsidiaries of Engineers, operate both electric and gas utility systems and other services. Their capital accounts and earnings statements, however, are such as to leave no doubt of the predominance of their electric utility properties.[19]

From the foregoing, it is apparent that in choosing a principal utility system for retention by Engineers under Section 11(b)(1), prime consideration from the standpoint of investment values, earnings and operations must be given to the electric systems of these two companies.

The Virginia company's electric system serves an area of approximately 13,500 square miles, in southeastern Virginia and northeastern North Carolina. Its customers number about 170,000 in an area having a population of about 830,000. The principal cities served (and their approximate populations) are: Richmond (193,000), Norfolk (145,000), Portsmouth (51,000), Petersburg (31,000), Fredericksburg (10,000), Hopewell (9,000), Suffolk (11,000), and Williamsburg (4,008) in Virginia; and Roanoke Rapids, North Carolina (9,000). It also serves approximately 500 smaller communities. The electric system in Virginia is subject to regulation by the State Corporation Commission of Virginia and, in North Carolina, by the Utilities Commission of North Carolina.

The electric system of the Gulf States company serves an area about 350 miles in length, covering over 27,000 square miles, in southern Louisiana and eastern Texas. Out of a population of approximately 405,000, the electric customers served in this area number about 92,000. The principal cities served (and their approximate populations) are: Beaumont (60,000), Port Arthur (46,000), Orange (9,500), Navasota (6,300), Huntsville (6,500), in Texas; Baton

[19] Data supporting this conclusion are set out in *Virginia Electric and Power Company and Gulf States Utilities Company*, 9 S. E. C. ..... (1941), Holding Company Act Release No. 2791.

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Rouge (38,000), Lake Charles (23,000), and Jennings (7,400), in Louisiana. In addition, about 240 smaller communities in these two States are served. The company's electric rates in municipalities in Texas are subject to the jurisdiction of the municipality, and the District Court of the State of Texas has jurisdiction to declare any extortionate or unreasonable rate to be unlawful. The Louisiana Department of Public Service has jurisdiction over the rates and services of local public-utility companies in that State.

The data introduced in evidence in this proceeding show that the electric utility system of Virginia Electric and Power Company and that of Gulf States Utilities Company (with minor exceptions noted in the footnote)[20] each consists, separately, of units of generating plants, transmission lines, and distributing facilities, whose utility assets are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area, in one or more States, not so large as to impair the advantages of localized management, efficient operation, and the effectiveness of regulation.

We find, therefore, and indeed there is no disagreement on this point, that the electric utility systems of the Virginia and Gulf States companies severally constitute integrated public-utility systems within the meaning of Section 2(a)(29)(A) of the Act.[21] In view of this conclusion and in view of the size and importance of such systems in relation to the holding-company system, it appears that either of them may be retained by Engineers as its principal system under Section 11(b)(1). The question thus arises as to what system or systems, if any, can be retained by Engi-

[20] Two small properties at Alvin and Jasper, Texas, are not interconnected or economically capable of being interconnected at this time with the major electric properties of the Gulf States Company.

[21] Excluded from these systems, of course, are the gas utility and non-utility businesses of the two companies in question. *Columbia Gas & Electric Corporation*, 8 S. E. C. ..... (1941), Holding Company Act Release No. 2477; *The United Gas Improvement Company, et al.*, 8 S. E. C. ..... (1941), Holding Company Act Release No. 2692.

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neers under Section 11(b)(1) *in addition to* its principal system.

3. *Geographical Limitations on Additional Systems under Section 11 (b) (1) (B).*

For a determination of what additional systems may be retained, we turn to Section 11 (b) (1) which, as already noted, primarily provides for the limitation of the operations of the holding-company system to a single integrated public-utility system:

> "*Provided, however,* That the Commission shall permit a registered holding company to continue to control one or more additional integrated public-utility systems, if, after notice and opportunity for hearing, it finds that—
>
> "(A) Each of such additional systems cannot be operated as an independent system without the loss of substantial economies which can be secured by the retention of control by such holding company of such system;
>
> "(B) All of such additional systems are located in one State, or in adjoining States, or in a contiguous foreign country; and
>
> "(C) The continued combination of such systems under the control of such holding company is not so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation."

It will be noted that any additional system to be retained must meet *all* of the tests laid down in clauses (A), (B) and (C), so that if a particular system fails to meet any one of the tests of any one of such clauses, it cannot be retained. While clauses (A) and (C) involve the determination of facts which have not yet been fully presented to us, clause (B) imposes a purely geographical limitation and can be

applied, once its meaning has been ascertained, simply by reference to a map of the holding-company system.

Our determination of the meaning of clause (B) at this time is essential to our execution of the mandate of Section 11 (b) (1) and will serve to delimit the issues remaining to be tried in this proceeding.

(a) *Contentions of respondents and of the staff.* The respondents have urged an interpretation of clause (B) which has been commonly designated as the "two-area" interpretation, pursuant to which additional integrated public-utility systems could be retained by the holding company (as far as clause (B) alone is concerned) if all such systems were located in any one State of the United States *no matter how remote from the principal system,* or in States adjoining each other (or in a contiguous foreign country) but *likewise remote from the principal system.*

The Public Utilities Division, on the other hand, urges upon us the so-called "single-area" interpretation which, it says, is the only interpretation of clause (B) which is consistent with the Congressional intent and the scheme of the Act as a whole. Under that interpretation, any public-utility systems retained by the holding company in addition to the principal system must all be located in a State *in which the principal system operates,* or in States adjoining (or in a foreign country contiguous to) such a State.

(b) *Congressional intent.* One of the primary purposes of the Congress in enacting the Holding Company Act was, as disclosed by Section 1 of the Act itself, to meet the problems and eliminate the evils that arise—

> "when the *growth and extension* of holding companies bears no relation to economy of management and operation or the integration and *coordination of related operating properties;*[22]
>
> • • • • • •
>
> ". . . and it is hereby declared to be the policy of this title, in accordance with which policy all the pro-

[22] Section 1 (b) (4), emphasis supplied.

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visions of this title shall be interpreted, to meet the problems and eliminate the evils as enumerated in this section, connected with public-utility holding companies which are engaged in interstate commerce or in activities which directly affect or burden interstate commerce; and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title.'"[23]

As we have already pointed out, the primary provision of Section 11 contemplates restricting the operations of each holding-company system to a *single* integrated public-utility system, and it is only *as an exception to that provision* that additional integrated public-utility systems are permitted to be retained. Thus, the validity of the two-area interpretation of clause (B) must be looked upon with some doubt if it would result in nullifying the primary purpose of Section 11(b)(1) and in making the exception vastly more important than the rule.[24] Yet, as will be shown further on in this opinion, that is what the two-area interpretation would do; for if additional systems may be retained subject only to the requirement that they be located in States *adjoining each other*, such additional systems may well dwarf

[23] Section 1(c).

[24] It is well settled that the terms of an exception to the general policy of a statute must be strictly construed against the claimant of its benefit: " . . . it is insisted that the exception in the act should receive such a broad construction as would destroy the plain purpose which caused the act to be adopted. But to so treat the act would be in plain disregard of the elementary rule requiring that exceptions from a general policy which a law embodies should be strictly construed, that is, should be so interpreted as not to destroy the remedial processes intended to be accomplished by the legislation." *Spokane & Inland Empire R. R. Co.* v. *United States*, 241 U. S. 344, 350 (1916); *Securities and Exchange Commission* v. *Sunbeam Gold Mines Co., et al.*, 95 F. (2d) 699, 701 (C. C. A. 9, 1938).

"The general rule of law is, that a proviso carves special exceptions only out of the body of the Act; and those who would set up any such exception must establish it. . . ." *Ryan* v. *Carter*, 93 U. S. 78, 83; quoted with approval in *Schlemmer* v. *Buffalo, Rochester and Pittsburgh Company*, 205 U. S. 1, at 10.

the principal system in size and importance and might, in fact, stretch across the entire United States. Moreover, the result would not be conducive to the elimination of evils arising "when the growth and extension of holding companies bears no relation to . . . the . . . *coordination of related operating properties;*" and such an interpretation would render clause (B) not only illogical but almost meaningless. As a consequence, that interpretation would greatly obscure the application of the interrelated and coordinate standards of clauses (A) and (C), which call for the findings that "Each of such additional systems cannot be operated as an *independent system* without the loss of substantial economies . . ." and that "The continued combination of such systems under the control of such holding company is not so large (considering . . . *the area or region affected*) as to impair the advantages of *localized management* . . ." (emphasis supplied).

Thus, an ambiguity appears on the face of the statute, particularly if (in accordance with a well recognized theory of construction) each provision of the proviso is read in relation to the main topic of Section 11(b)(1). On that theory of construction it is argued that relational words in the proviso (such as "additional," "independent," "adjoining," "contiguous") have reference to, and must be construed in relation to, the "single integrated public-utility system" contemplated in the primary provision of the section. So construed, clause (B) may logically be paraphrased substantially as follows:

> (B) All of such additional systems are located in a State *in which the single integrated public-utility system operates,* or in States adjoining such a State, or in a foreign country continguous thereto.

This, in substance, is the interpretation of clause (B) urged upon us by the Public Utilities Division. That it is also the interpretation intended by the legislative drafts-

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men of the provision is made clear by the Conference Report,[25] which summarizes the proviso as follows:

> "The substitute [Section 11(b)(1)] . . . makes provision to meet the situation where a holding company can show a real economic need on the part of additional integrated systems for permitting the holding company *to keep these additional systems under localized management with a principal integrated system.* Under such circumstances the Commission is directed to permit the holding company to retain control of such additional systems, even though not physically integrated with the principal system, *provided all such integrated systems are located in the same State or States, or in adjoining States or a contiguous foreign country.*"[26]

Both houses of Congress adopted the Conference Report, which for the first time presented Section 11(b)(1) in its present form. Prior to that time the subject matter of Section 11 had been the center of highly controversial debate, and had received different treatment at the hands of the Senate and the House.

The comparable provision in the bill as originally passed by the Senate[27] provided for the dissolution of the holding-company relation "promptly after January 1, 1940," except that the Commission was to permit a registered holding company to continue to be a holding company in the first degree if such holding company obtained ". . . from the Federal Power Commission a certificate that the continuance of the holding-company relation is necessary, under

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[25] *Supra*, footnote 8. Respondents have suggested that clause (B) is not ambiguous on its face. As we have indicated in the text, we think a patent ambiguity has been shown; but even without such ambiguity, we consider it not only proper but necessary for us to look to the regislative history for the meaning intended by the Congress in order that the Act may be administered consistently, as far as possible, with the true purpose and intent of its creators. "The meaning to be ascribed to an Act of Congress can only be derived from a considered weighing of every relevant aid to construction." See *United States* v. *Dickerson*, 310 U. S. 554, 562 (1940); *United States* v. *American Trucking Associations*, 310 U. S. 534 (1940).

[26] Conference Report at 71 (emphasis supplied).

[27] S. 2796 (74th Cong., 1st Sess.), passed by the Senate June 13, 1935.

the applicable State or foreign law, for the operations of a geographically and economically integrated public-utility system, 'serving an economic region in a single State or extending into two or more contiguous States or into a contiguous foreign country.'"[28]

The bill so passed was sent to the House and referred to the Committee on Interstate and Foreign Commerce, which materially modified Section 11 and other portions of the bill by a proposed substitute for Title I of S. 2796. Under the House substitute, the Commission was directed to order holding companies and their subsidiaries to limit their operations to a single integrated public-utility system, except that if the Commission found that it was not necessary in the public interest so to limit the operations of such holding-company system, the Commission should require such company to take only such action as the Commission found necessary to limit such operations to such number of integrated public-utility systems as it found may be included in such holding-company system consistently with the public interest.[29]

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[28] This provision, Section 11(b)(3) of S. 2796, read:

"Promptly after January 1, 1940, to require each registered holding company, to take such steps (either by divesting itself of control, securities, or other assets, or by reorganization or dissolution, or otherwise) as the Commission finds necessary or appropriate to make such company cease to be a holding company: Provided, however, that the Commission, upon such terms and conditions as it may find necessary or appropriate in the public interest or for the protection of investors or consumers, shall permit a registered holding company to continue to be a holding company in the first degree if such company has obtained from the Federal Power Commission a certificate that the continuance of the holding-company relation is necessary, under the applicable State or foreign law, for the operations of a geographically and economically integrated public-utility system serving an economic region in a single State or extending into two or more contiguous States or into a contiguous foreign country."

[29] Section 11 of the House substitute bill provided:

"(b) It shall be the duty of the Commission, after notice and opportunity for hearing, by order to require each registered holding company and each subsidiary company thereof to take such action (either by divesting itself of any interest in or control over property or persons, or otherwise) as the Commission finds necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system; except that if the Commission finds that it is not necessary in the public interest to so limit the operations of such holding-company system, the order of the Commission shall require such company to take only such action (either by divesting itself of any interest in or control over persons or property, or otherwise) as the Commission finds necessary to limit such operations to such number of

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The House substitute Section 11(b) was strongly criticized, the claim being made that it did not provide definite standards to guide the Commission in determining, in particular cases, whether or not it would be "necessary in the public interest" to permit the retention by a holding company of more than one integrated public-utility system.[30] Indeed, the House provisions with respect to additional systems were so indefinite that there were differences of opinion in the Committee on Interstate and Foreign Commerce itself on what geographical restrictions were contemplated.

For example, it was stated in the additional views of Representative Eicher (then a member of that Committee and now Chairman of this Commission) that the House amendment "thoroughly emasculated" Section 11 of the Senate bill which, he said, "provided for the rearrange-

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integrated public-utility systems as it finds may be included in such holding-company system consistently with the public interest. The Commission shall not, under the foregoing provisions of this subsection, require any company to divest itself of any interest in or control over (1) persons or property other than a public-utility company or the utility assets of a public-utility company unless the Commission finds that such interest or control may not be retained consistently with the public interest, or (2) any person doing business exclusively outside the United States, or property located outside the United States. The Commission shall determine the public interest, for the purposes of this subsection, in relation to the promotion of economy of management and operation of public-utility companies and efficiency and adequacy of service rendered by such companies, the facilitating of effective public regulation, the promotion of economies in the raising of capital, the undesirability of control of operating properties through disproportionately small investment, and such other factors as may affect the public interest as related to the operations of the holding-company system involved."

The final sentence of this section, outlining the standards for determining the public interest, was transferred in substance to Section 1 of the bill prior to its passage by the House on July 2, 1935. See S. 2796 [Rep. No. 1318] June 24, 1935, Union Calendar No. 451 (74th Cong., 1st Sess.); 79 Cong. Rec. 10634-10637.

[30] One of the outspoken critics of this provision was Joseph P. Kennedy, then Chairman of this Commission. During the heated debate which occurred in the Senate following the passage of that bill by the House, Senator Wheeler read to the Senate a letter received from Kennedy pointing out the undesirability of giving to an administrative body such broad and undefined duties and powers. The letter objected to the House version of Section 11(b) in that regard because (a) the administrative burden cast on this Commission of making such broad policy determinations would be too overwhelming to permit the achievement of satisfactory results, and (b) it was not wise policy to vest in any one group of men the "unfettered discretion to decide matters of such transcendent importance." 79 Cong. Rec. 10838 (July 9, 1935).

ment of operating companies controlled by giant holding companies into rational contiguous systems of moderate size . . . to break down their concentration of economic power, to make them amenable to successful regulation in smaller matters, and to promote local operating efficiency through locally interested management."[31]

On the other hand, Representative Rayburn observed that "section 11(b) *in both the Senate bill and the House amendment* contemplates the reestablishment of the advantages of localized management in the operating utility industry and the consequently necessary breakdown of large holding companies over geographically scattered operating utility companies."[32] He based this interpretation of the House amendment on its primary requirement that each holding company would have to limit its control over operating utility companies to one integrated system, with exceptions—which he apparently regarded as comparatively minor—(a) in respect of a holding company whose interests are essentially intrastate or essentially foreign, and (b) where the Commission "finds that more than one integrated system may be included in a holding-company system 'consistently with the public interest.'" He went on to point out that the compromise measure (finally enacted) met the House desire for a flexibility not present in the Senate bill—

> ". . . by the statement of additional definite and concrete circumstances under which *exception should be made to the form of one integrated system.* Definite exceptions not only provide a satisfactory constitutional standard but also an effective standard for the guidance of both the Securities and Exchange Commission and those holding companies which wish voluntarily to comply with Congressional policy."[33]

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[31] H. R. Rep. No. 1318 on S. 2796 (74th Cong., 1st Sess.), p. 44.

[32] Conference Report, at 70 (emphasis supplied). The Committee of Conference included Representatives Rayburn, Huddleston and Lea, and Senators Wheeler, Barkley, Brown and Shipstead. Representative Rayburn and Senator Wheeler were sponsors of the bill in their respective Houses and were chairmen of their respective committees. They were, of course, the leading conferees.

[33] *Ibid.* (emphasis supplied).

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The foregoing furnishes sufficient evidence, we think, to establish that the (A), (B) and (C) standards finally enacted into law were not intended to perpetuate holding company control over operating companies in widely scattered *areas*, but were merely intended to relax the Senate's absolute prohibition against the retention of any properties *not integrated with the principal system*,[34] and to provide definite and concrete standards in aid of both enforcement and voluntary compliance.

But if any more proof be needed, it is found in the next succeeding paragraph of the Conference Report (quoted *ante*) which speaks of the provision Section 11(b)(1) permitting the holding company "to keep these additional systems *under localized management with a principal integrated system . . . even though not physically integrated with the principal system, provided all such integrated systems are located in the same State or States, or in adjoining States or a contiguous foreign country.*"[35]

It is significant that no member of either the House or the Senate suggested that the compromise provision would permit a holding company to control public-utility companies operating in two or more widely separated areas. On the contrary, the more active opponents of the Senate proposal, who had supported the House substitute bill, also voted against the compromise measure. They regarded the proviso to the present Section 11(b)(1) as an inconsequential exception to the strict requirement of the Senate bill. For example:

> Mr. Huddleston:
>
> "The Rayburn proposal is merely the 'death sentence' in a different form of words . . . to the uninformed, compliance may seem a possibility, but to those with a knowledge of industry they are a mere gesture . . . in short, the pretence of permission to

[34] There is, of course, a great difference between geographical remoteness and a mere lack of "integration" as that term is defined in Section 2(a)(29).

[35] Conference Report, at 71 (emphasis supplied). See also Representative Rayburn's speech on the floor of the House explaining the compromise version, 79 Cong. Rec. 14164, August 22, 1935.

hold more than one system adds nothing to the proposal . . .

"The proposed Section 11 . . . requires the dissolution of all holding companies other than those of first and second degree, *and in practical effect restricts each of them to a single utility system.* Under it the dissolution or reorganization of practically all the important companies will be forced."[36]

Mr. Cooper of Ohio:

"The second condition for more than one utility system exists 'if all of such additional systems are located in one State or in adjoining States.'

"That provision is of little importance since, as stated, most of the utility holding companies have acquired their properties in different territories in order to diversify the risk . . .

"I submit to you that the exception granted on the basis of these three conditions does not materially modify the limitation to one integrated public-utility system, nor will it in any way prevent the dismemberment of all utility holding companies."[37]

Representative Mott in speaking for the Conference Report asserted that "the compromise section . . . is even more liberal than section 11 of the House bill which was adopted in this body on July 2 . . . "[38]—meaning, without doubt, that it was more liberal to the holding companies, but in respects which had nothing to do with the geographical requirements of clause (B).[39]

Representative O'Connor, who also voted for the compromise, remarked:

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[36] 79 Cong. Rec. 14167, August 22, 1935 (emphasis supplied). It should be noted that Representative Huddleston was a manager on the part of the House at the Committee of Conference.

[37] *Id.*, at 14166.

[38] *Id.*, at 14170.

[39] There is no reference to geographical limitations in his entire speech (*id.*, at 14168-14170), which was chiefly concerned with the provisions permitting the continued existence of holding companies in the second degree, and the provisions for judicial review of the Commission's orders.

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> "Now, Mr. Speaker, this proposal is a distinct victory over the 'death sentence', as it was contained in the Senate bill. This proposal does permit holding companies which are *really integrated units and are natural units to operate in a real concentrated territory without spreading their talons all over the country,* with an Insull in Chicago picking up a power plant in Florida or a Hopson from 61 Broadway, New York City, operating a little plant in Oklahoma at the expense of the consumers and investors."[40]

The House agreed to the Conference Report by a vote of 222 to 112.[41] On the same day the Report was submitted to the Senate by Senator Wheeler, who had been the leading manager on the part of that body at the Committee of Conference, and it was speedily agreed to without a record vote.[42] Shortly thereafter Senator Wheeler, in an address to the Senate, gave his interpretation of the action taken by the Committee of Conference and was unchallenged by any Senator. The pertinent portions of his statement were as follows:

> "Section 11 in the Senate bill, as you will recall, required that a holding company limit its operations to one integrated operating system and to businesses reasonably incidental thereto. The House bill also purported to limit the operations of a holding company to one integrated system, but permitted an exception which allowed the Commission to permit a holding company to control as many systems as it deemed consistent with the public interest. The House bill accordingly thrusts the entire burden of breaking up the giant holding companies upon the Securities Commission without any effective or constitutional standard to guide them in their task and with no concrete congressional sanction to fall back

[40] *Id.*, at 14168 (emphasis supplied).
[41] 79 Cong. Rec. 14626-7, August 24, 1935.
[42] *Id.*, at 14473.

upon to resist the pressures that would inevitably be brought against the Commission to prevent their taking any effective action. *Since both bills accepted the proposition that a holding company should normally be limited to one integrated system,* my colleagues and I conceived it to be our task to find what concrete exceptions, if any, could be made to this rule that would satisfy the demand of the House for some greater flexibility. After considerable discussion *the Senate conferees concluded that the furthest concession they could make would be to permit the Commission to allow a holding company to control more than one integrated system if the additional systems were in the same region as the principal system and were so small that they were incapable of independent economical operation and if the combination of these small systems under one holding company would not create a corporation so large as to impair the advantages of localized management and the effectiveness of regulation.* I consider this a very generous concession upon the Senate. If properly administered, however, this concession should not defeat the purpose of the President to break up the giant holding companies with their undue concentration of economic power and with their *absentee management by remote control.* . . .

"The Senate had to yield on the provision that all holding companies should cease to be holding companies after 1940 unless affirmatively found to be necessary to the operations of an integrated system under the applicable State law. *The provisions retained in the bill, however, which require as a general rule the limitation of the holding company to one integrated system and which require that the corporate structure of the holding company be not unnecessarily complicated, should serve to break up all of the unnecessarily large and complicated holding-company empires.*"[48]

[48] *Id.*, at 14479 (emphasis supplied).

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While, as above noted, Senator Wheeler's statement was not made to the Senate before it voted and may not strictly be considered part of the legislative history of the Act, it was a contemporaneous interpretation by one who was certainly in a position to speak with authority, was made before the Act went to the President for signature, was delivered unchallenged before the Senate, and is a matter of public record. Since it merely corroborates the interpretation contained in the Conference Report its significance may, perhaps, be regarded as only cumulative; but as a "relevant aid to construction"[44] it deserves some consideration. More significant, perhaps, is the fact that the respondents have cited no persuasive authority to the contrary in the debates or elsewhere, though they have obviously made a thorough investigation of the legislative history.[45]

In summary, our conclusions in the light of the legislative history of the Act are: first, that the question of policy with respect to the geographical limitation of holding-company system operations, which was the subject of extensive study by committees of the Congress and of prolonged debate in both houses, was finally determined by the Congress itself and was certainly not intended to be left open for reexamination and redetermination by us; and second, that such policy as finally determined by the Congress and expressed in the Act is that this Commission, by appropriate administrative action, shall require each registered holding company (and each of its subsidiaries) to limit the public-utility operations of its holding-company system to (a) a single integrated public-utility system and (b) such addi-

[44] See *United States* v. *Dickerson*, *supra*, footnote [35].

[45] In their briefs on this point, the respondents have cited the testimony of witnesses before the legislative committees, which we have not found of great assistance because the testimony was representative of many divergent views. They have also quoted from the legislative debates and committee reports, but the quotations are either ambiguous or have reference to a multi-area interpretation of the House substitute bill which we recognize was shared by many Congressmen. In at least one respect their argument seems to turn against them, for in referring to Representative Cooper's remarks they point out that "he urged that the compromise be rejected and that Section 11 of the House bill be passed on the ground that the House bill did *not* require that those three conditions (A B C) be met for the *retention of systems geographically diversified*." (Reply Brief, p. 15, emphasis in original.)

tional integrated public-utility systems as meet the standards of clauses (A) and (C) *and* are located in a State in which such single system operates, or in States adjoining such a State, or in a foreign country contiguous thereto.

(c) *Rationale under the statute.* If our conclusion made in the light of the legislative history is correct, perhaps no more need be said on the point. However, we have given consideration to the manner in which the two-area and one-area interpretations would work in practical application, and believe that a brief analysis along those lines will throw additional light upon the meaning to be ascribed to clause (B) of Section 11(b)(1).

For example, we have seen that Virginia Electric and Power Company has one integrated electric utility system in Virginia and North Carolina, and that Gulf States Utilities Company has such a system in Louisiana and Texas. Under the two-area interpretation of clause (B), Engineers could, as far as clause (B) alone is concerned, keep the former as its principal system and the latter as an additional system, but if it did that, it could not retain any additional system located in Virginia or in North Carolina or in their adjoining States, in proximity to the principal system; yet on the same basis it *could* keep any number of additional systems which happened to be located in Texas or Louisiana or in any States adjoining them and adjoining each other. If we assume for the purpose of argument that The Western Public Service Company's electric properties constitute a number of integrated systems, and that the electric properties of El Paso Electric Company are an integrated system, then on this basis the systems retainable under the two-area interpretation of clause (B), in addition to the principal system of Virginia, would be: the Gulf States system in Texas and Louisiana; the El Paso system in Texas and New Mexico; and the Western systems located in Colorado, Wyoming, Nebraska, South Dakota, Kansas, Iowa, and Missouri.[46]

Assuming further that the gas utility systems in Virginia, Louisiana, and Washington each constitutes an

[46] See map annexed as Exhibit 1 of Appendix A.

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integrated system, Engineers could also under that interpretation of clause (B) retain the gas system in Louisiana, but could not retain the one nearest the principal system in Virginia or those in the State of Washington.[47] On the other hand, it will be noted that Missouri adjoins Kentucky and Kentucky adjoins Virginia, so that if Engineers had an integrated public-utility system in Kentucky it could, under the two-area interpretation, retain that as one of the additional systems and could then, presumably, retain the gas system in Virginia as well—not by reason of its proximity to the principal system but because of a fortuitous scattering of unrelated additional systems found in a chain of States adjoining each other. By no stretch of the imagination can we conceive that clause (B) was intended to permit any such result, and we must at once reject the proposition that the words "adjoining States" as used in that clause means States adjoining each other.[48]

But the respondents have suggested another possible meaning for these words consistent with the two-area theory, and that is that if "adjoining" must be related to some antecedent contained in Section 11(b)(1), then that antecedent must be the "one State" referred to in clause (B)—without, however, in any way relating such "one State" to the location of the principal system. On that basis all the additional systems, whether near to or distant from the principal system, must be located in one State or in States adjoining such State. This suggestion is capable of producing the following result:

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[47] See map annexed as Exhibit 2 of Appendix A.

[48] *Cf. Holy Trinity Church* v. *United States*, 143 U. S. 457, at 459 (1892), where it was said:

> "It is a familiar rule, that a thing may be within the letter of the statute and yet not within the statute, *because not within its spirit, nor within the intention of its makers.* This has been often asserted, and the reports are full of cases illustrating its application. This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an act in question, *and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes it unreasonable to believe that the legislator intended to include the particular act.*" (Emphasis supplied.)

Assume a holding company having its principal system located in Virginia and two additional systems, one located in Maryland and the other in North Carolina. A glance at the map will suggest the possibility that all such systems might serve the same compact geographic and economic area or region; yet, despite this, under the foregoing interpretation of "adjoining" in clause (B), the Act would forbid the holding company to retain both additional systems because they are not both located in one State and because Maryland does not adjoin North Carolina. On the other hand, the holding company *could* on the same basis retain any number of additional systems located in California, for example, or scattered among California and its adjoining States, Oregon, Nevada, and Arizona.

Respondents contend that both of these two-area interpretations are supported by the literal language of clause (B), while the single-area interpretation is not. We disagree, believing that the clause is ambiguous upon its face. but even if it be conceded that the respondents are right in this respect, both of the two-area interpretations must nevertheless be rejected unless we are to become myopic to all but the literal words of a single dependent clause. In the words of the Supreme Court, "Literal interpretation of statutes at the expense of the reason of the law and producing absurd consequences or flagrant injustice has frequently been condemned. . . We are not forced by the letter to do violence to the spirit and purpose of the statute."[49] And more recently:

> "There is, of course, no more persuasive evidence of the purpose of a statute than the words by which the legislature undertook to give expression to its wishes. Often these words are sufficient in and of themselves to determine the purpose of the legislation. In such cases we have followed their plain meaning. When that meaning has led to absurd or futile results, however, this Court had looked beyond the words to the purpose of the Act. Frequently,

[49] Hughes, C. J., in *Sorrells* v. *United States*, 287 U. S. 435, at 446, 448 (1932).

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> however, even when the plain meaning did not produce absurd results but merely an unreasonable one 'plainly at variance with the policy of the legislation as a whole' this Court has followed that purpose, rather than the literal words."[50]

Turning to the one-area interpretation of clause (B), we find that no absurd result follows although, as suggested by the respondents, the end result does not necessarily eliminate the possibility that additional systems retainable under clause (B) alone may be geographically remote from the principal system. For example, if Engineers designates the Virginia-North Carolina electric system as its principal system, then under the one-area interpretation of clause (B) it could retain as additional systems, provided the other standards of the statute are met, both the gas utility system in Virginia[51] and the electric utility system in Savannah, Georgia. This is because the former would be in one of the same States with the principal system, and the latter would be in a State adjoining one of such States; and while Savannah is probably not within the same "area or region" as the assumed principal system, and its retention by Engineers might be repugnant to the standards of clause (A) or clause (C), the result reached by this interpretation is neither absurd nor out of line with the intended function of clause (B) which (as we read the Act as a whole and the legislative intent otherwise expressed) is to delimit the maximum boundary of operations of a combination of integrated systems.

Reference has already been made to the recitations in Section 1(b)(4) of evils that arise "when the growth and extension of holding companies bears no relation to economy of management and operation or the integration and coordination of related operating properties," and the mandate of Section 1(c) that "all the provisions of this title shall be

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[50] Reed, J., in *United States* v. *American Trucking Association*, 310 U. S. 534, at 543 (1940).

[51] We do not undertake to decide at this time whether or not an integrated gas utility system may be retained in combination with an integrated electric utility system serving the same area. That question raises problems that are not now before us.

interpreted, to meet the problems and eliminate the evils as enumerated in this section . . . and for the purpose of effectuating such policy to compel the simplification of public-utility holding-company systems and the elimination therefrom of properties detrimental to the proper functioning of such systems, and to provide as soon as practicable for the elimination of public-utility holding companies except as otherwise expressly provided in this title."

We concur in the suggested conclusion that "a geographic limitation in furtherance of the interpretation of holding company systems that would allow the retention of systems in two distant areas, and yet prohibit the retention of two additional systems adjoining the principal system, cannot be found to be based on any rational purpose or policy consistent within itself."[52] An interpretation that would have that result is, we think, entirely contrary to the legislative concept of limiting holding-company control to related operating properties in a restricted territory, and inconsistent with the purpose of fostering effective regulation and localized management as contemplated by the Act.

As we have already pointed out, clauses (A), (B) and (C) are part of a proviso carving an exception out of the primary requirement of Section 11(b)(1)—the requirement that each holding company limits its operations to a *single integrated public-utility system.* The specific definition of the term "integrated public-utility system" set out in Section 2(a)(29) is a restrictive one, requiring that such a system, in the case of electric utility companies, consist of—

> "one or more units of generating plants and/or transmission lines and/or distributing facilities, whose utility assets, whether owned by one or more electric utility companies, are physically interconnected or capable of physical interconnection and which under normal conditions may be economically operated as a single interconnected and coordinated system confined in its operations to a single area or region, in one or more States, not so large as to impair (consid-

[52] Public Utilities Division brief, p. 14.

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ering the state of the art and the area or region affected) the advantages of localized management, efficient operation, and the effectiveness of regulation."

It is entirely consistent with the purposes of the Act that two or more systems serving a single area or region, each integrated in and of itself but the aggregate failing to meet all of the foregoing conditions, might be retained by a holding company under the (A), (B) and (C) standards of Section 11(b)(1). The one-area interpretation of clause (B) does not by any means, as suggested by respondents, render the proviso nugatory; and in fact, the legislative history already explored indicates clearly that the proviso was intended to permit the retention of additional integrated *systems* and not the continued operation of systems in additional and remote *areas.*[53].

(d) *Application to the Engineers holding-company system.* Having determined that the two-area interpretation of clause (B) must be rejected as wholly illogical and inconsistent with the purposes of the Act, and that the one-area interpretation accords with the legislative intent and the provisions of the Act as a whole, our duty under Section 11(b)(1) with respect to the system before us is clear.

Whether the principal system of Engineers be the electric system of Virginia Electric and Power Company or that of Gulf States Utilities Company—and it is not disputed by respondents that it will be one or the other of those two systems—clause (B) of Section 11(b)(1) prohibits the retention by Engineers of the public-utility systems of Puget Sound Power & Light Company, The Western Public Service Company and its subsidiaries, and The Key West Electric Company.[54]

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[53] *Cf.* the conditions of clause (C) of Section 11(b)(1) that "The continued *combination of such systems i. e.*, the principal and additional systems together under the control of such holding company is not so large (considering the state of the art and the *area or region affected*) as to impair the advantages of localized management, efficient operation, or the effectiveness of regulation." (Emphasis supplied.)

[54] Whether or not Engineers may retain *any* interest in these companies is another question. See section 6 of this opinion, *infra.*

The question whether Engineers may or may not retain its other public-utility systems and non-utility businesses will be reserved for later determination. If the electric utility system of Virginia Electric and Power Company were designated as the principal system, then under clause (B) Engineers could not retain the public-utility systems of Gulf States Utilities Company or of El Paso Electric Company (Delaware) or its subsidiaries; and the question whether Engineers could retain the electric utility system of Savannah Electric & Power Company, the gas utility system in Virginia, Baton Rouge Bus Company, Inc., or any interest in the non-utility businesses operated by the Virginia and Savannah companies (or any combination of the foregoing) would depend on statutory provisions other than clause (B).[55]

On the other hand, if the integrated electric utility system of Gulf States Utilities Company were designated as the principal system, then under clause (B) Engineers could not retain the public-utility systems of Virginia Electric and Power Company or Savannah Electric & Power Company; and the question whether Engineers could retain the electric utility systems in Jasper and Alvin, Texas, or that of El Paso Electric Company (Delaware) or its subsidiaries, the gas utility system in Louisiana, Baton Rouge Bus Company, Inc., or any interest in the non-utility businesses of the Gulf States and El Paso companies (or any combination of the foregoing) would likewise depend on statutory provisions other than clause (B).

4. *Selection of Principal System.*

As will be seen from the preceding section of this opinion, the selection of a principal system for Engineers is a condition precedent to important definitive action necessary for full compliance with Section 11(b)(1). The respondents have urged that Engineers itself has the right to make such selection for the purposes of this proceeding.

[55] Issues other than those arising under clause (B) are being heard before a trial examiner but have not yet been presented to us for determination.

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The Act does not expressly state whether the selection of the "single integrated public-utility system" retainable as the principal system is for the holding company to make solely on the basis of its own wishes, or for us to make on the basis of evidence and with due regard to the public interest and the protection of investors or consumers. An intermediate position might be that the holding company may make the selection subject to our approval or disapproval based upon evidence and judged in the light of the foregoing standards. However, we do not think it necessary to decide these questions under the circumstances presently before us.

As we have stated above, a choice of either the Virginia or the Gulf States electric system would be acceptable here. Assuming, for the purpose of argument, that it is the right of the holding company to make the selection in question, we think it clear that such right carries with it the duty to make the selection as promptly as possible. The mandate of Section 11(b)(1) is that compliance with its provisions be had "as soon as practicable after January 1, 1938."

It appears that the only obstacle now faced by Engineers in making the selection is this: that if its claimed right of selection is to have any substance, Engineers must be placed in a position to make an intelligent choice between the Virginia and Gulf States electric systems. This can only be done, the respondents argue, after we have made a determination as to what, if any, additional systems and incidental businesses could be retained in combination with the alternative principal systems.

We are of the opinion that respondents in a Section 11(b)(1) proceeding have no right, under the Act or otherwise, to insist upon our making determinations of this character before the holding company selects its principal system. Our function under the section is to determine whether or not any "additional" integrated systems may be retained under the standards of clauses (A), (B) and (C) in conjunction with a "single" integrated system. Strictly speaking, of course, there can be no determination

permitting the retention of an "additional" system until after the "single" system has been selected, and any *affirmative* findings we may make prior to the selection will necessarily be merely advisory in character.[56] Nevertheless, the choice in this case between the Virginia and Gulf States electric systems is a close one, and we have concluded that it is within our discretion to make advisory findings of the type requested, and that it would be reasonable to do so in this instance. We have accordingly instructed the trial examiner and counsel in the case to proceed to trial upon the issues of fact, more fully outlined in the last section of this opinion, pertinent to the selection of the principal system.

We think it appropriate to add here that at some point in the proceeding, before a final disposition can be made, it will be necessary to determine what action is necessary to limit the operations of the business conducted by Engineers Public Service Co., Inc., a mutual service company indirectly controlled by Engineers, in a manner that will meet the requirements of Section 13 of the Act after the divestment of properties under Section 11(b)(1) shall have been effected. It seems to us, tentatively, that the operations of the service company should not only be made to conform to the standards of Section 13 but should also be limited to a business which will be reasonably incidental or economically necessary or appropriate to the operations of whichever principal system is selected. At the present time the service company is organized to serve the entire holding-company system, including the non-returnable utility systems and other businesses. The issues as to it will be set down for trial either in this proceeding or in a proceeding under Section 13 at a time to be announced later.

5. *Status of Properties to be Divested.*

Respondents have urged that the entry of an order requiring the divestment of the Puget Sound, Western and

[56] It is otherwise with *negative* findings, such as those made herein with respect to the Puget Sound, Western and Key West systems. Those findings are equally determinative whether the principal system be that of Virginia or of Gulf States, and are not based upon alternative hypotheses.

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Key West properties, without a final determination as to the status of such properties under Sections 2(a)(29) and 11(b)(1), would deprive Engineers of the opportunity to secure a fair and reasonable price for such properties and would, therefore, be improper. The argument is that Engineers would have difficulty in disposing of the properties subject to a divestment order unless possible purchasers are informed: whether utility assets in which such persons may be interested constitute one or more integrated public-utility systems; whether non-utility businesses meet the standards of the incidental businesses clauses; whether, if such persons acquire a particular set of properties, such transaction would bring them within the jurisdiction of the Act; and whether, if it does bring them within the jurisdiction of the Act, the properties can be retained as purchased or whether they must in some part be cast off because such properties themselves fail to meet the standards of Section 11. The substance of the argument is that unless the Commission makes such advisory findings as to all the properties which are subject to the divestment order, Engineers will be prejudiced in its attempts to dispose of these properties because of the unsolved problems facing possible purchasers.

We think it is both unnecessary and inappropriate for us to determine the status of the utility assets of non-utility businesses of the Puget Sound and Key West companies. Neither of these companies is a holding company within the meaning of the Act, and neither would be subject to our jurisdiction if divorced from holding company control. Advisory findings as to them would be wholly valueless to any potential purchaser not subject to the Act, and would be of little, if any, value to a potential purchaser subject thereto.

For example, if we were to determine in this proceeding that certain utility assets of the Puguet Sound company constitute an integrated electric or gas utility system under Section 2(a)(29), the determination would clearly be of no value to any potential purchaser not subject to the Act as a holding company or as a subsidiary or affiliate of a holding

company. On the other hand, a potential purchaser subject to the Act must file an application under Section 10 for our approval in advance of the proposed purchase, and in that proceeding the questions arising under both Section 2(a)(29) and Section 11 could be fully determined.[57] They cannot be fully determined in this proceeding since we do not know the identity of the purchaser, or exactly what properties will be involved, or how such properties will relate to any utility systems already owned by such purchaser.

With respect to the status of non-utility businesses, any determination we might make in this proceeding would necessarily be subject to revision if such businesses were acquired by another person subject to the Act; for a business that is reasonably incidental or economically necessary or appropriate to the operations of one public-utility system or combination of systems would not necessarily be so in respect of another such system or combination. Again, the question could be determined under Section 10 on the application of a potential purchaser subject to the Act, and would be of no consequence to one not subject thereto.

Moreover, any determination of status which we might make in this proceeding as to one or more units might well become obsolete by virtue of the sale or other disposition of such units themselves or other units to which they are related—in which case the question of status at the time of sale or other disposition would have to be redetermined.

It may be suggested that prospective purchasers who are not subject to the Act, but who would become subject thereto by reason of their purchase, do not, under the requirements of Section 9(a), have the duty or the right to

[57] Section 10(c) provides that we must not approve an acquisition of securities or utility assets, or of any other interest, which "is detrimental to the carrying out of the provisions of Section 11," and that we must not approve the acquisition of securities or utility assets of a public-utility or holding company unless we find that "such acquisition will serve the public interest by tending towards the economical and efficient development of an integrated public-utility system." It is true that in the past we have sometimes made these findings without prejudice to our right to determine later, in a Section 11 proceeding, whether or not the securities, assets, or interests so acquired could lawfully be retained by the person acquiring them; but that was done with the understanding and for the accommodation of the purchasers, who were willing to make the acquisitions on that basis.

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apply to the Commission under Section 10 for the approval of an acquisition of utility assets or utility securities, and that such persons may be prejudiced if the status of the properties which they may want to acquire from Engineers is not determined in this proceeding. It will be noted that any person proposing to acquire securities, the ownership of which would render such person a holding company, may under Section 5(a) register with the Commission as a holding company by filing a notification of registration. Such person would thereby become a registered holding company even before committing himself to a proposed acquisition, and by virtue of the mere notification of registration the Commission would have jurisdiction under Section 10 to entertain an application for the acquisition of utility securities by such person. Under such application, as already indicated, the questions presented under Section 10 (c) would resolve the impact of Section 11. If the application were not approved, or if for any other reason the transaction were not consummated, the prospective purchaser would be entitled to withdraw from registration under Section 5(d).

While we are of the opinion that any potential purchaser of the properties involved would be in a position, before commitment, to be fully advised as to the status of such properties if such questions arise under Sections 2(a) (29) or 11(b)(1), it should be observed that there is no substantial probability that such questions will arise as to these properties. We are advised by counsel for respondents that the properties of the Puget Sound company are the subject of negotiations for sale to public authorities, and that the negotiations are well under way. The Key West system is small, and non-utility businesses are involved. We conclude that questions of status under Sections 2(a)(29) and 11(b)(1) of the assets and businesses of the Puget Sound and Key West companies should not be tried or determined in this proceeding.

The Western Public Service Company is in a different category. It is itself a registered holding company, as to which our duty under Section 11(b)(1) is to require by

order that it take such action as we may find necessary to limit its operations to a single integrated public-utility system and such additional systems and such businesses as are permitted by the Act. If it remains a registered holding company the issues with respect to it must be tried and determined either in this or in a separate proceeding under Section 11(b)(1), and that will be done as soon as practicable.

We do not think we are obliged to determine these issues before ordering Engineers to divest itself of its interest in the Western company properties, or that Engineers is entitled as of right to have us do so. Despite any order of divestment we might enter here, the Western company will remain a respondent in the 11(b)(1) proceeding, and there is nothing in the Act which would prevent the issues with respect to it being tried after the entry of such an order.

Other considerations, however, lead us to conclude that an exception should be made in this case. We are this day issuing a notice of and order for hearing in respect of Western under Section 11(b)(2) of the Act, such hearing to be consolidated with the hearing under Section 11(b)(1) in respect of that company. The proceeding under Section 11(b)(2) looks toward a recapitalization of Western and redistribution of voting power among its security holders, and may have a substantial effect upon the action which it will be necessary for Engineers to take under a divestment order. The issues so raised being dominant, in our opinion, over the issues arising under Section 11(b)(1), we shall, purely as a matter of discretion, withhold our order of divestment for the time being, and direct that evidence be taken as soon as practicable on the issues in the consolidated hearing.

6. *Extent of Divestment Required.*

Respondents argue that an order of divestment herein should go no farther than to require Engineers to divest itself of *control* of the Puget Sound, Western and Key West companies and should not, as proposed in our order for

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hearing, require it to divest itself of *all* its interest therein. The argument is that even though Section 11(b)(1) prohibits Engineers from *operating or controlling* the *utility systems* and other businesses of those companies, its provisions allow Engineers to retain an *investment interest* therein. This proposition, in our opinion, is unsound.

The pertinent provisions of Section 11(b)(1) read as follows:

> "(b) It shall be the duty of the Commission, as soon as practicable after January 1, 1938:
>
> "(1) To require by order, after notice and opportunity for hearing, that each registered holding company, and each subsidiary company thereof, shall take such action as the Commission shall find necessary to limit the operations of the holding-company system of which such company is a part to a single integrated public-utility system, and to such other businesses as are reasonably incidental, or economically necessary or appropriate to the operations of such integrated public-utility system . . .
>
> • • • • • •
>
> "The Commission may permit as reasonably incidental, or economically necessary or appropriate to the operations of one or more integrated public-utility systems the retention of an interest in any business (other than the business of a public-utility company as such) which the Commission shall find necessary or appropriate in the public interest or for the protection of investors or consumers and not detrimental to the proper functioning of such system or systems."

We recently had occasion to examine the above provisions in connection with a problem raised in *The United Gas Improvement Company*,[18] where the company had

[18] 8 S. E. C. ..... (1941), Holding Company Act Release No. 2692, pp. 15-18.

investment interests in certain utility and non-utility businesses and claimed a right under Section 11(b)(1) to retain such interests. The respondents in the present proceeding have made the request that we consider the arguments in the United Gas Improvement Company briefs as being made also in this proceeding. We have acceded to this request although the problem presented here is not the same as that in the *U. G. I.* case. Investment interests in non-affiliated utilities, such as those discussed in the *U. G. I.* case, are not involved at this stage of the present proceeding; we are here dealing with utility companies which are admittedly controlled by Engineers and are part of its holding-company system.

In an attempt to make the problem here similar to that in the *U. G. I.* case, respondents argue that if Engineers reduces its holdings of voting securities in the Puget Sound, Western and Key West companies to an amount representing less than 10% of the voting power therein, either the three companies themselves or Engineers may then file applications under Section 2(a)(8) of the Act for orders by us declaring that such companies are not subsidiary public-utility companies under the Act,[59] and that should such declaratory orders be issued, Engineers will have satisfied the provisions of Section 11(b)(1) as far as those three companies are concerned. Respondents imply that if we followed any other procedure we should be depriving them of substantive rights under the statute. As we have stated, however, the problem here is clearly distinct from that in the *U. G. I.* case, and we fail to see how these respondents could have any substantive right under the statute to receive declaratory orders under Section 2(a)(8).

First, it is apparent that the retention of an investment interest in a company which has been dominated, controlled and serviced by the owner for a number of years (as in the

[59] Counsel for respondents at the oral argument described the suggested orders under Section 2(a)(8) as orders declaring the companies in question not to be "public-utility companies" under the Act. Section 2(a)(8), however, deals with the parent-subsidiary relationship only, and not with the definition of "utility company", which is governed by Sections 2(a)(3) and 2(a)(4). We therefore assume that the form of respondent's argument was inadvertent, and treat it in the light most favorable to respondents.

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present case) is substantially different from the ownership over a long period of years of an investment interests in a non-affiliated company (as in the *U. G. I.* case). Engineers now has its representatives managing the three subsidiaries in question; and we could not say that a mere divestment by Engineers of voting securities of those companies, down to some indefinite figure less than 10% or even less than 5%, would constitute action complying with Section 11(b)(1)—*i. e.*, would effectively eliminate controlling influences or limit the operations of the Engineers holding-company system to a single integrated public-utility system and such other businesses and additional systems as are permitted by the Act.

Second, proceedings under Section 2(a)(8) are not designed for the purpose suggested by the respondents, which would make them ancillary to Section 11(b)(1) proceedings and would, in effect, convert them into a means of obstructing and interminably delaying Section 11(b)(1) proceedings.

The three subsidiary companies in question have no substantive right to indulge in proceedings under Section 2(a)(8) or to have any of their securities retained by Engineers. Proceedings under Section 2(a)(8) afford a means of relieving companies (whether utilities or non-utilities) of the "obligations, duties and liabilities" imposed upon subsidiary companies of registered holding companies under the Act, if we find that they are not controlled by or susceptible to the controlling influence of a specified holding company within the meaning of the section. The right of the companies in question is to be relieved of those "obligations, duties and liabilities" if they are actually divorced from the holding company-subsidiary relationship, and that end can readily be accomplished by Engineers' divesting itself of all its interests in such companies—unless, indeed, such interests are acquired by another registered holding company, in which case the subsidiaries would not be entitled to the relief in question.

Similarly, Engineers has no substantive right to indulge in proceedings under Section 2(a)(8). That section per-

mits an application to be filed by a holding company as well as by a company in respect of which the order is to be entered, because it may well be an advantage to a holding company not to have certain responsibilities which it would otherwise have in respect of a company which is *prima facie* a subsidiary under the Act. The issue presented in such a proceeding is whether not there is control or susceptibility to controlling influences *in fact*, and does not merely relate to the percentage of voting securities held. It has frequently been a most troublesome question, necessitating the most thorough exploration of historical and potential relationships between the companies involved.[60] Favorable action on the application cannot determine the issues for all time, but must by reason of its very nature be conditional and temporary—a declaration of present status under existing circumstances, subject to change with any material change of circumstances.[61] Congress cannot

[60] See *e.g., Detroit Edison Company*, 7 S. E. C. 968 (1940), aff'd *Detroit Edison Co. v. Securities and Exchange Commission*, ... F. (2d) ..... (C. C. A. 6th, decided May 12, 1941); and *Manchester Gas Company*, 7 S. E. C. 57 (1940).

[61] Section 2(a)(8) in part provides:

> "As a condition to the entry of, and as a part of, any order granting such application, the Commission may require the applicant to apply periodically for a renewal of such order and to file such periodic or special reports regarding the affiliations or intercorporate relationships of the applicant as the Commission may find necessary or appropriate to enable it to determine whether in the case of the applicant the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective. The Commission, upon its own motion or upon application, shall revoke the order declaring such company not to be a subsidiary company whenever in its judgment any condition specified in clause (i), (ii), or (iii) is not satisfied in the case of such company, or modify the terms of such order whenever in its judgment such modification is necessary to ensure that in the case of such company the conditions specified in clauses (i), (ii), and (iii) are satisfied during the period for which such order is effective."

For an illustration, see our conditional order in *Panhandle Eastern Pipe Line Company, et al.*, Holding Company Act Release No. 2778 (May 27, 1941), which provided:

> ". . . that the application of Panhandle Eastern Pipe Line Company for an order declaring it not to be a subsidiary of the Missouri-Kansas Pipe Line Company, be, and it hereby is, granted, upon condition, however, that if at any time it appears to the Commission that the material facts and circumstances stated in its Findings and Opinion herein are changed, the Commission may reopen these proceedings and, in that event, if after notice and opportunity for further hearing, Missouri-Kansas Pipe Line Company, or Panhandle Eastern Pipe Line Company, shall fail to sustain the burden of proving that Panhandle Eastern Pipe Line Company is not controlled, an intermediary through which control

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be thought to have intended any such inconclusive disposition of questions under Section 11(b)(1), which calls not only for finality of action but also for a promptness of action which would be precluded by the injection of Section 2(a)(8) proceedings wherever divestment of a subsidiary's securities is involved. A thorough divestment of all of Engineers' interests in the Puget Sound, Western and Key West companies would make unnecessary the relief afforded by Section 2(a)(8), and certainly it would not deprive Engineers, any more than its subsidiaries, of any substantive right under that section.

7. Nature of Order to be Entered Herein, and Instructions Regarding the Further Conduct of Hearing.

On the basis of the conclusions hereinabove set forth as to the requirements of Section 11(b)(1), we find that divestment by Engineers of all its interests in Puget Sound Power & Light Company, The Western Public Service Company, and The Key West Electric Company constitutes action (though not by any means all the action) that is necessary to limit the operations of the Engineers holding-company system to a single integrated public-utility system and to such other businesses and additional systems as are permitted by Section 11(b)(1). We will take no action at this time with respect to the retention of other properties by Engineers, the issues with respect to such properties not yet having been submitted to us; nor will our order at this time, for the reasons already noted, require Engineers to divest itself of its interest in The Western Public Service Company.

With respect to the companies named, the respondents have been accorded an adequate opportunity to present their arguments and evidence. We have considered these companies in relation to the whole system, and after ex-

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is exercised, or subject to a controlling influence by Missouri-Kansas Pipe Line Company within the meaning of Section 2(a)(8) of the Public Utility Holding Company Act of 1935, so much of this order as grants the application of Panhandle Eastern Pipe Line Company to be declared not to be a subsidiary of Missouri-Kansas Pipe Line Company may be revoked."

ploring all possible bases for their retention, we have found none. The properties of these companies are so situated that their status under Section 11(b)(1) as applied to Engineers cannot be altered by any subsequent order herein dealing with other properties in the holding-company system.[62]

The mandate of Section 11(b)(1) is that "as soon as practicable after January 1, 1938" we require by order, after notice and opportunity for hearing, that compliance be had with its provisions. Section 20(a) of the Act authorizes this Commission "from time to time to make, issue, amend, and rescind such . . . orders as it may deem necessary or appropriate to carry out the provisions of this title . . ." The propriety of entering separate final orders at various stages of a proceeding of this type has already been discussed and decided by us.[63]

Accordingly our order will provide that at the present time the following action be taken as necessary for the purpose of bringing about compliance with Section 11(b)(1) of the Act: that Engineers shall sever its relationship with the companies named hereafter by disposing or causing the disposition, in any appropriate manner not in contravention of the applicable provisions of the Act or the Rules and Regulations promulgated thereunder, or its direct and indirect ownership, control and holding of securities issued by Puget Sound Power & Light Company and its subsidiaries, and The Key West Electric Company.

Our order herein will require that to be done within one year, as provided by Section 11(c) of the Act, without prejudice to the right of the respondents to apply for additional time under the provisions of that section, and also without prejudice to our right to enter other and further orders herein from time to time requiring respondents to

[62] The premise for this conclusion is that the principal system of Engineers will be either the electric utility system of the Virginia company or that of the Gulf States company—a premise that is not disputed by counsel for the respondents.

[63] *United Gas Improvement Company, et al.*, 8 S. E. C. ..... (1941), Holding Company Act Release No. 2692; *Community Power and Light Company*, 6 S. E. C. 182, 194-195 (1939); *Peoples Power and Light Company*, 2 S. E. C. 829, 836 (1937).

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take such additional action as may be necessary for compliance with Section 11.

The hearing will meanwhile proceed with respect to other issues in a manner not inconsistent with the views expressed in this opinion, and subject to the following instructions which have been heretofore issued and which are deemed binding upon the trial examiner and counsel in the case:

(1) Respondents are not to be permitted to introduce evidence bearing solely upon the constitutionality of the Act unless, in the event judicial review of one or more of our orders herein is sought, the reviewing court orders such evidence to be taken before us. However, if counsel for respondents deems it necessary to make a new and more formal proffer of such evidence in this proceeding in order to save respondents' rights on appeal, he is to be permitted to make such proffer at a time to be fixed by the trial examiner with due regard for the convenience of counsel.

(2) Respondents are to be permitted to introduce evidence as to the integration of the El Paso electric system, and as to whether such system meets the standards of clauses (A) and (C) of Section 11(b)(1) in relation to the Gulf States electric system; also evidence as to the nonutility businesses of El Paso Electric Company (Delaware).

(3) Respondents are to be permitted to introduce additional evidence, if they so desire, as to the integration of the Baton Rouge gas system, and as to whether such system meets the standards of clauses (A) and (C) of Section 11(b)(1) in relation to the Gulf States electric system; also as to the integration of the Norfolk gas system, and as to whether such system meets the (A) and (C) standards in relation to the Virginia electric system.

(4) Respondents are to be permitted to introduce evidence as to the integration of the Savannah electric system, and as to whether such system meets the (A) and (C) standards in relation to the Virginia electric system; also

evidence as to the non-utility businesses of Savannah Electric and Power Company.

(5) Respondents are not to be permitted to introduce evidence as to the integration of the Puget Sound or Key West electric or gas systems, or as to whether any of those systems meet the (A) and (C) standards in relation to any other of such systems, or as to any non-utility businesses of Puget Sound Power & Light Company.

(6) At an appropriate time to be fixed by the further direction of this Commission, respondents will be permitted to introduce evidence of the character described in the preceding paragraph relating to the electric utility system or systems, and the non-utility businesses, of The Western Public Service Company and its subsidiaries.

By the Commission (Chairman Eicher and Commissioners Heall and Pike), Commissioner Purcell not participating.

FRANCIS P. BRASSOR,
Secretary.

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Appendix A.

Engineers Public Service Company

Holding-Company System

Name of Company	Kind of Business	State of Organization & Date		State of Operation
Engineers Public Service Co.	Holding Company	Del.	6/23/25	——
Baton Rouge Bus Co., Inc.	Bus Company	La.	8/ 1/38	Louisiana
El Paso Elec. Co. (Del.)	Holding Company	Del.	6/14/24	——
El Paso Elec. Co. (Tex.)	Elec. Util. Str. Ry. Bus & Toll Brdg.	Tex.	8/30/01	Texas and New Mexico
El Paso and Juarez Traction Co.	Str. Ry. & Toll Bridge	Tex.	4/ 9/00	Mexico
Gulf States Utilities Company	Elec. & Gas Util. Ice & Water	Tex.	8/25/25	Texas and Louisiana
The Key West Electric Company	Electric Utility	N. J.	5/16/98	Florida
Puget Sound Power & Light Co.	Elec. & Gas Util. Telephone & Steam	Mass.	7/ 8/12	Washington
Washington Electric Company	Holds Land and Water Rights	Maine	12/ 6/12	——
North Coast Transportation Co.	Bus Company	Wash.	12/ 1/21	Wash., Ore., & British Columbia, Can.
Independent Stages, Inc.	Bus Company	Nev.	5/15/34	Wash. & Oreg.
Diamond Ice & Storage Company	Ice & Cold Storage	Wash.	11/25/92	Washington
The Ice Delivery Company	Ice Company	Wash.	4/12/13	Do.
Savannah Elec. & Pr. Company	Elec. Str. Ry. & Bus	Ga.	8/ 5/21	Georgia
Virginia Elec. & Pr. Company	Elec. Str. Ry. Gas & Bus	Va.	6/29/09	Virginia and North Carolina
The Western Pub. Service Co.	Elec. Ice & Stm. Htg.	Md.	4/20/29	Nebr., S. Dak., Wyo., Colo.
Missouri Service Company	Elec. Ice & Water	Mo.	7/25/28	Missouri, Iowa
The Northern Kansas Power Co.	Electric Utility	Kan.	4/ 2/30	Kansas
Engineers Public Service Co. Inc.[a]	Service Company	N. Y.	11/24/26	——

[a] Engineers Public Service Company, Inc., is a mutual service company, the outstanding stock of which is owned in varying amounts by practically all of the above system companies.

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(Exhibit

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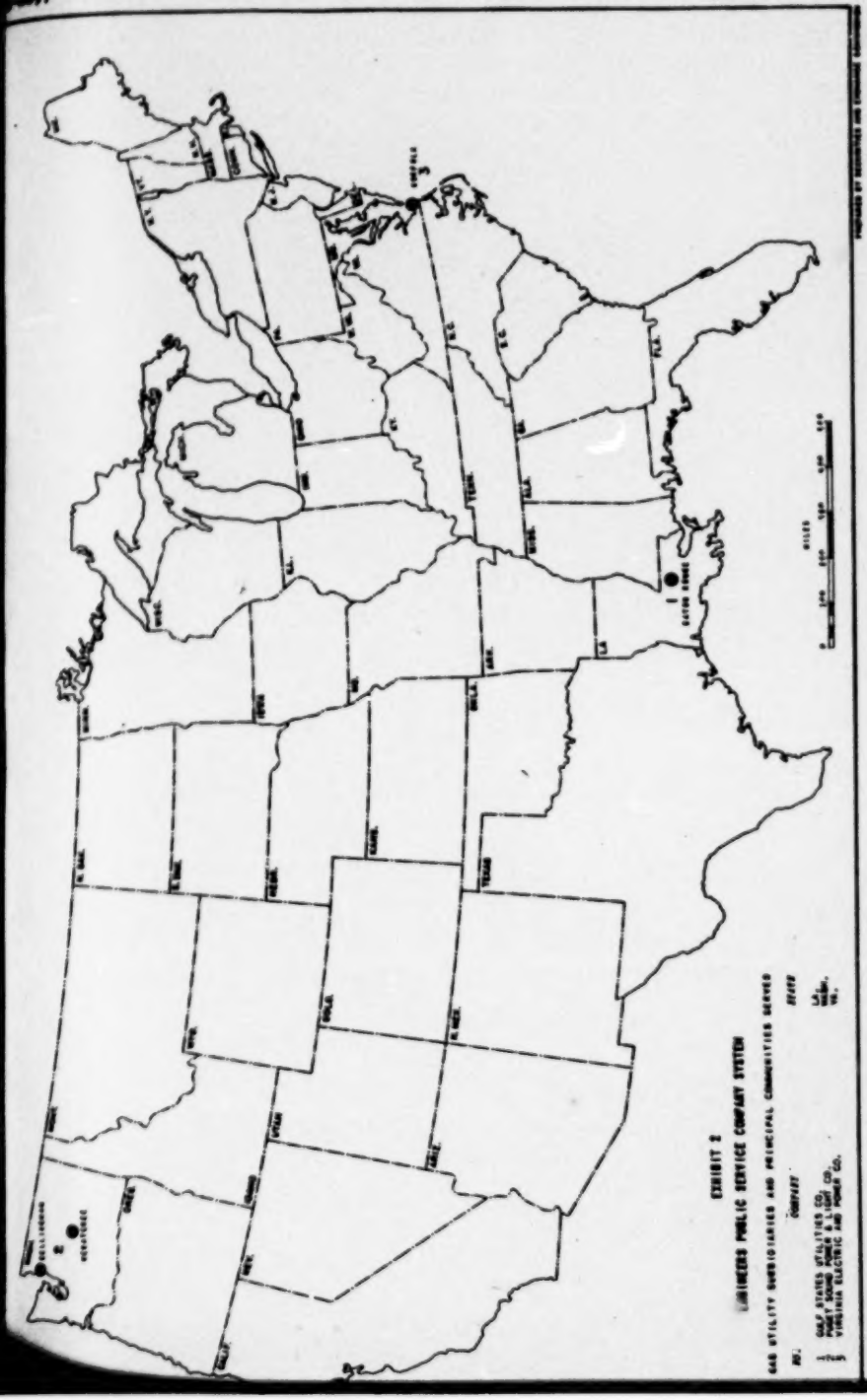
(Exhibit 2)



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[Document No. 591—R. pp. 10733-10734]

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

At a regular session of the Securities and Exchange Commission, held at its office in the City of Washington, D. C., on the 23rd day of July A. D., 1941.

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY AND ITS SUBSIDIARY COMPANIES, Respondents.

Order Requiring Divestiture of Securities.

File No. 59-4.

(Public Utility Holding Company Act of 1935, Section 11(b)(1)).

1. The Commission having on February 28, 1940, issued a Notice of and Order for Hearing pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935 with respect to Engineers Public Service Company and its Subsidiary Companies, Respondents, stating that it appears that the Engineers Public Service Company holding company system is not confined in its operations to that of a single integrated public-utility system and to such other businesses as are reasonably incidental or economically necessary or appropriate to the operations of such an integrated public-utility system within the meaning of Section 11(b)(1) of the Act; and

2. The Respondents, in their answer filed to such Notice of and Order for Hearing, having objected that they had not been furnished with a statement of the Commission more particularly specifying underlying conclusions with respect

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to particular portions of the holding-company system and as to what action the Commission believed would be required by Section 11(b)(1) of the Act; and

3. The Commission in its Opinion issued June 1, 1940, having undertaken to furnish such a statement, and on March 11, 1941, having issued (a) a Statement of Tentative Conclusions as to the application of the provisions of Section 11(b)(1) to the Engineers Public Service Company holding-company system, and (b) an order requiring the Respondents to show cause why the Commission should not forthwith issue an order requiring the Respondent, Engineers Public Service Company, to divest itself of its interest in all subsidiaries except certain subsidiaries named in the order to show cause; and

4. The Commission, at hearings held thereafter upon notice duly given, having heard the Respondents with respect to certain issues and having considered the record, and having this day made and filed its findings and opinion herein, finding (among other things) that the action hereinafter directed to be taken is necessary and appropriate for the purpose of bringing about compliance with Section 11(b)(1) of the Act, without prejudice, however, to the right of this Commission to enter such other and further orders herein from time to time as the Commission may be advised requiring Respondents to take such additional action as may be necessary for compliance with Section 11; now therefore it is

ORDERED, pursuant to Section 11(b)(1) of the Public Utility Holding Company Act of 1935, that Engineers Public Service Company shall sever its relationship with the companies hereinafter designated by disposing, or causing the disposition in any appropriate manner not in contravention of the applicable provisions of said Act or the Rules and Regulations promulgated thereunder, of its direct and indirect ownership, control and holding of securities issued by Puget Sound Power & Light Company and its subsid-

iaries, and The Key West Electric Company; and it is further

ORDERED that the Respondents, in accordance with subparagraph (c) of Section 11 of said Act, shall comply with the preceding paragraph of this order within one year from the date hereof, without prejudice to their right to apply for additional time to comply with such order as provided in such section.

By the Commission.

FRANCIS P. BRASSOR,
Secretary.

(SEAL)

[Document No. 617—R. pp. 11391-11409]

UNITED STATES OF AMERICA

BEFORE THE

SECURITIES AND EXCHANGE COMMISSION

IN THE MATTER

of

ENGINEERS PUBLIC SERVICE COMPANY
AND ITS SUBSIDIARY COMPANIES,
Respondents.

File No. 59-4.

(Public Utility Holding Company
Act of 1935, Section 11(b)(1))

Petition for Rehearing on Order Dated September 16, 1942, and for Leave to Adduce Additional Evidence.

Engineers Public Service Company (hereinafter called "Engineers"), Virginia Electric and Power Company (hereinafter called "Virginia"), Gulf States Utilities Company (hereinafter called "Gulf States"), Savannah Electric and Power Company (hereinafter called "Savannah"), El Paso Electric Company (Delaware) (hereinafter called "El Paso (Delaware)"), El Paso Electric Company (Texas) (hereinafter called "El Paso (Texas)"), El Paso and Juarez Traction Company (hereinafter called "Juarez"), Baton Rouge Bus Company, Inc. (hereinafter called "Baton Rouge Bus"), and Engineers Public Service Company, Inc. (hereinafter called "Engineers, Inc.") (all hereinafter sometimes called collectively "Petitioners"), by their attorneys, hereby petition the Commission for a rehearing before the Commission in respect of Commission's Order herein, dated September 16, 1942 (hereinafter referred to as the "Order") and for leave to adduce additional evidence as hereinafter specified, and allege:

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I.

PETITIONERS ARE AGGRIEVED AND THEIR RIGHTS ARE VIOLATED BY VARIOUS OF THE PROVISIONS OF THE ORDER DIRECTING THE DISPOSITION OF VARIOUS BUSINESSES.

Petitioners are aggrieved and their rights are violated by the provisions of the Order and related findings of the Commission and the opinion upon which the Order is based in various respects, namely—

(1) In so far as they make findings in respect of and direct the disposition of any of the systems, properties, and business referred to in the Order and findings, which are now owned or controlled by any of the Petitioners.

(2) In so far as they make findings in respect of and direct that Engineers, on the assumption that it retains Virginia as its principal system, must sever its relationship and cease its ownership and control and holding of securities issued and properties owned, controlled or operated by Savannah, Gulf States, El Paso (Texas), El Paso (Delaware), Baton Rouge Bus and Juarez, or, in the alternative, if it elects to retain Gulf States as its principal system, that it must so sever its relationship and cease its ownership and control in respect of Virginia, Savannah, El Paso (Texas), El Paso (Delaware), Baton Rouge Bus and Juarez.

(3) In so far as they make findings in respect of and direct that Engineers may not elect to retain the electric system of Savannah as a system additional to that of Virginia.

(4) In so far as they make findings in respect of and direct that Engineers may not retain the electric system of El Paso (Texas) as a system additional to that of Gulf States.

(5) In so far as they make findings in respect of and allow Engineers only fifteen days within which to

petition for leave to retain as its principal system the electric system of Gulf States.

(6) In so far as they make findings in respect of and direct that Engineers shall cease to own, directly or indirectly, in any event, any property or facilities now owned or operated through Virginia for the purpose of conducting, directly or indirectly, any gas utility, gas appliance merchandising and jobbing and transportation businesses and shall cease to engage in any such business.

(7) In so far as they make findings in respect of and direct the severance of the relationship of Engineers and El Paso (Delaware) with Juarez.

(8) In so far as they make findings in respect of and direct that Engineers and El Paso (Delaware) shall cease to own or operate, directly or indirectly, any property or facilities now owned or operated by them through El Paso (Texas) for the purpose of conducting any transportation or toll bridge business and shall cease to engage, directly or indirectly, in any such business now so engaged in by them through El Paso (Texas).

(9) In so far as they make findings in respect of and direct that the transportation business of Savannah cannot be retained as a business reasonably incidental or economically appropriate to the operations of the electric system of said company.

(10) In so far as they make findings in respect of and direct that the transportation business of Baton Rouge Bus cannot be retained as a business reasonably incidental or economically appropriate to the operations of the electric system of Gulf States.

(11) In so far as they make findings in respect of and direct that the water business of Gulf States cannot be retained as a business reasonably incidental or

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economically appropriate to the operations of the electric system of Gulf States.

(12) In so far as they make findings in respect of and direct that the electric properties and business of Gulf States at Alvin, Texas, cannot be retained as an integrated public utility system additional to the electric system of Gulf States.

(13) In so far as they make findings in respect of and direct that the transportation and toll bridge properties and business of El Paso (Texas) and Juarez may not be retained as a business reasonably incidental to or economically necessary or appropriate to the operations of the electric system of El Paso (Texas).

(14) In so far as they make findings in respect of and direct that the retention of Engineers, Inc. is not reasonably incidental to or economically necessary or appropriate to the operations of the holding company system of Engineers and directs that the same be separated from such system.

In support of their allegations that they are aggrieved as aforesaid, Petitioners set forth below in subdivisions II, III, IV, and V of this petition various alleged errors in the Order and related findings.

II.

MANY OF THE FINDINGS OF FACT ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE AND THE PROVISIONS OF THE ORDER BASED THEREON ARE INVALID.

(1) The finding that the transportation properties of Virginia are neither reasonably incidental nor economically necessary or appropriate to the operation of the electric system of Virginia, is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and that part of the Order requiring that said transportation properties be divested by Engineers is invalid on

any proper construction of the Public Utility Holding Company Act of 1935 (hereinafter called the "Act").

(2) The finding that the severance of the gas properties of Virginia and the gas appliance merchandising business incidental thereto from common control by Engineers with the electric system of Virginia will not result in a loss of substantial economies, is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and the Commission having found that said gas properties comply with the provisions of subsection (B) of Sec. 11 (b) (1) (hereinafter referred to as the "(B) Standard") of the Act, and with the provisions of subsection (C) of Sec. 11 (B) (1) (hereinafter referred to as the "(C) Standard") of the Act, that part of the Order requiring that said gas properties and the gas appliance merchandising business incidental thereto be divested by Engineers, is invalid on any proper construction of the Act.

(3) The finding that the severance of the electric system of Savannah from common control by Engineers with the Virginia electric system will not result in a loss of substantial economies, is not supported by substantial evidence and there is substantial evidence in the record to the contrary, and the finding that the continued combination of the electric system of Virginia and the electric system of Savannah under the common control of Engineers is so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation or the effectiveness of regulation, and there is substantial evidence in the record to the contrary; and, the Commission having found that the electric properties of Savannah comply with the (B) Standard with relation to the electric properties of Virginia, that part of the Order requiring that said electric properties be divested by Engineers, is invalid on any proper construction of the Act.

(4) The finding that the transportation properties of Savannah are neither reasonably incidental nor economi-

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cally necessary or appropriate for the operation of the electric system of Savannah, is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and that part of the Order requiring that said transportation properties be divested by Engineers, is invalid on any proper construction of the Act.

(5) The finding that the transportation business of Baton Rouge Bus is neither reasonably incidental nor economically necessary or appropriate to the operation of the electric system of Gulf States, is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and that part of the Order requiring that said transportation business of Baton Rouge Bus be divested by Engineers, is invalid under any proper construction of the Act.

(6) The finding that the water business of Gulf States is neither reasonably incidental nor economically necessary or appropriate to the operation of the electric system of Gulf States, is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and that part of the Order requiring that said water business of Gulf States be divested by Engineers, is invalid under any proper construction of the Act.

(7) The finding that the ice business of Gulf States is neither reasonably incidental nor economically necessary or appropriate to the operation of the electric system of Gulf States, is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and that part of the Order requiring that said ice business be divested by Engineers, is invalid under any proper construction of the Act.

(8) The finding that the severance of the gas properties of Gulf States and the gas appliance merchandising business incidental thereto from common control by Engineers with the electric system of Gulf States, will not result in a loss of substantial economies, is not supported by substantial evidence and there is substantial evidence in the record to the

contrary; and, therefore, the Commission having found that said gas properties comply with the (B) Standard and (C) Standard, the part of the Order requiring said gas properties and gas appliance merchandising business incidental thereto be divested by Engineers, is invalid under any proper construction of the Act.

(9) The finding that the electric utility property of Gulf States located at Alvin, Texas, does not constitute an integrated public utility system within the definition of Sec. 2(a)(29)(A) of the Act is not supported by substantial evidence and there is substantial evidence in the record to the contrary, and there being in the record substantial evidence that said Alvin properties comply with the provisions of the (A) Standard, the (B) Standard and the (C) Standard, and no substantial evidence to the contrary, that part of the Order requiring that said electric properties located at Alvin be divested by Engineers, is invalid under any proper construction of the Act.

(10) The finding that the severance of the electric system of El Paso (Texas) from common control by Engineers with Gulf States will not result in the loss of substantial economies is not supported by substantial evidence and there is substantial evidence in the record to the contrary, and the finding that the continued combination is so large (considering the state of the art and the area or region affected) as to impair the advantages of localized management, efficient operation or the effectiveness of regulation is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and, the Commission having found that the electric properties of El Paso (Texas) comply with the (B) Standard with relation to the electric properties of Gulf States, that part of the Order requiring that the electric properties of El Paso (Texas) be divested by Engineers, is invalid on any proper construction of the Act.

(11) The finding that the transportation and toll bridge businesses of El Paso (Texas) are neither reasonably incidental nor economically necessary or appropriate to the

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operation of the electric system of El Paso (Texas), is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and that part of the Order requiring that said transportation and toll bridge businesses be divested by Engineers and by El Paso (Delaware) is invalid on any proper construction of the Act.

(12) The finding that the street railway and toll bridge businesses of Juarez are not reasonably incidental nor economically necessary or appropriate to the operation of the electric system of El Paso (Texas) is not supported by substantial evidence and there is substantial evidence in the record to the contrary; and that part of the Order requiring that said street railway and toll bridge businesses be divested by Engineers and El Paso (Delaware) is invalid on any proper construction of the Act.

III.

THE ORDER IS IN CONFLICT WITH AND NOT AUTHORIZED BY THE PROVISIONS OF SEC. 11(b)(1) OF THE ACT, IN CERTAIN RESPECTS HEREINAFTER SET FORTH.

The Order and the Commission's Findings and Opinion upon which the same are based are in conflict with and are not authorized by the provisions of Sec. 11(b)(1) of the Act, in the following respects:

(1) In so far as they are based upon the conclusion of law that Sec. 11(b)(1) requires or permits the Commission in determining whether a non-utility business is "reasonably incidental or economically necessary or appropriate to the operations of one or more integrated public utility systems" to take into account any other considerations than those which are prescribed in the Act, namely—

(a) Is the retention of such business necessary or appropriate in the public interest; *or*

(b) Is the retention of such business necessary or appropriate for the protection of investors; *or*

(c) Is the retention of such business necessary or appropriate for the protection of consumers; *and*

(d) Is the retention of such business detrimental to the proper functioning of the integrated utility system?

(2) In so far as they are based upon the conclusion of law that the gas properties of Virginia are not part of the same single integrated public utility system, within the meaning of said Sec. 11(b)(1), as the electric utility properties of said company, or that the gas properties of Gulf States are not part of the same single integrated public utility system as the electric utility properties of said company.

(3) In so far as they are based upon the conclusion of law that in considering standards of clause (C) of Sec. 11(b)(1), the Commission is required to or may properly take into account the geographical relationship of the primary system and the additional integrated utility system, the retention of which is being considered; and

(4) In so far as they are based upon the conclusion of law that clause (B) of Sec. 11(b)(1) requires that the additional system or systems which under Sec. 11(b)(1) the Commission may permit to be retained must be located in the same state in which is located the principal system, or in states adjoining such State, or in the foreign country contiguous to such state.

IV.

THE ORDER AND SEC. 11(b)(1) OF THE ACT, IF SO CONSTRUED AS TO AUTHORIZE THE ORDER, ARE VOID AND OF NO FORCE AND EFFECT AND IN CONFLICT WITH THE CONSTITUTION OF THE UNITED STATES.

The Order, and Sec. 11(b)(1) of the Act, and each and every provision of said Sec. 11(b)(1), if so construed as to

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authorize the Order, are in conflict with the Constitution of the United States and void and of no force and effect, as and if applied to the Petitioners, for the following reasons, among others:

(a) They invade the reserved powers of the several States in violation of the Tenth Amendment to the Constitution of the United States, in their interference with intrastate transactions and their attempted control of intrastate corporations in the exercise of charter powers given them by the States of their incorporation;

(b) they constitute an unlawful exercise of the power of Congress to regulate commerce with foreign nations, among the several States, and with Indian tribes, in excess of any powers conferred upon Congress to that end;

(c) they deprive Petitioners and their respective security holders of liberty and property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States;

(d) they constitute a taking of the private property of Petitioners and of their respective security holders for public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States;

(e) their provisions are unjust, unreasonable, arbitary and capricious and have no real or substantial relation to any proper purpose sought to be accomplished and are in violation of the Constitution of the United States and of the Fifth Amendment thereto;

(f) said Sec. 11(b)(1) fails to prescribe with requisite certainty any standard of conduct thereunder for holding companies, subsidiary companies, or affiliates, and fails to prescribe with requisite certainty the obligations imposed thereby upon holding companies, subsidiary companies and affiliates, in violation

of the Fifth Amendment to the Constituion of the United States;

(g) said Sec. 11(b)(1) constitutes an unlawful delegation of legislative power in violation of Section 1 of Article I of the Constitution of the United States, in that it contains no adequate or reasonable standards by which the action of the Commission, which is charged with the duty of administering said section and issuing rules, regulations and orders thereunder, is to be determined or controlled; and

(h) said Sec. 11(b)(1) constitutes an unlawful delegation of judicial power in violation of Section 1 of Article III of, and in violation of the Fifth Amendment to, the Constitution of the United States in that it deprives Petitioners of their right to a judicial determination of all questions of fact affecting their constitutional rights, or affecting the jurisdiction of the Commission to exercise the powers attempted to be delegated to it since, under Sec. 24(a) of the Act, the findings of the Commission as to the facts, if supported by substantial evidence, are conclusive upon the review of any order or rule of the Commission.

V.

PETITIONERS SHOULD BE GIVEN LEAVE TO ADDUCE ADDITIONAL EVIDENCE IN THIS PROCEEDING.

(1) The rights of Engineers and its subsidiaries above named have been violated and prejudiced by the refusal of the examiner appointed by the Commission in this proceeding, pursuant to the instructions of the Commission, as set forth in the Order of the Commission, dated July 23, 1941, to receive in evidence herein the testimony and exhibits set forth in the volume marked "Respondent's Proffer of Constitutional Evidence" and marked for identification herein as "Engineers' Exhibit No. 220", which was proffered for the purpose of establishing the invalidity and un-

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constitutionality of Sec. 11(b)(1) of the Act as applied to Petitioners; and Petitioners pray that the hearing herein be reopened and Petitioners be given leave to adduce as evidence herein the testimony and exhibits set forth in said proffer of constitutional evidence, as well as such other evidence as it may desire to introduce for the purpose of establishing that the Order and the provisions of Sec. 11(b)(1) of the Act, as applied to Petitioners, are unconstitutional, void and of no force and effect under the Constitution of the United States and the amendments thereto, particularly in that the provisions of Sec. 11(b)(1) and the order as applied to Petitioners have no real or significant relation to the objects sought to be accomplished by the Act and in that the regulatory devices prescribed by Sec. 11(b)(1) of the Act and attempted to be enforced by the Order have no real or substantial relation to any of the evils which the Act was designed to eliminate, as well as in the other respects herein above set forth.

2. Petitioners also pray that the hearing herein be reopened and the Petitioners be given leave to adduce additional evidence herein relating to the application of the (A) Standard, the (B) Standard and the (C) Standard to the retention of the utility systems of Gulf States and/or El Paso Electric Company as systems additional to the public utility system of Virginia, considered as the principal system. As ground for failure to adduce the evidence referred to in this paragraph (2), Petitioners allege that the Commission, by its Findings and Opinion and Order of July 23, 1941 herein, erroneously made as the law of this case an interpretation of subdivision (B) of Sec. 11(b)(1) of the Act which prevented and precluded the Petitioners from offering or proffering herein any such evidence.

WHEREFORE, Petitioners respectfully pray (a) that a rehearing before the Commission be granted to them in respect of the Commission's Order, dated September 16, 1942; (b) that the hearing herein be reopened and the Petitioners be permitted to introduce the evidence mentioned in paragraphs (1) and (2) of subdivision V hereof; and (c) that

said Order be stayed during the pendency of this Petition for Rehearing and thereafter until the evidence referred to in paragraphs (1) and (2) of subdivision V hereof shall have been received and the reopened record herein closed.

In filing this petition, Petitioners do not waive or abandon any further objections to said Order of the Commission not hereinabove set forth in this Petition, which have heretofore been urged by Petitioners before the Commission prior to the entry of said Order and reserve the right to urge such objections in any petition for review, as well as those set forth herein.

The Petitioners do not intend that the filing of this Petition or any ruling made thereon by the Commission shall extend beyond November 15, 1942, the time within which a petition for the review of said Order of the Commission may be filed with the appropriate United States Court, and reserve the right to file a petition for a review before any action shall have been taken by the Commission upon this Petition.

Respectfully submitted,

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